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THE
PROCEEDINGS
OF
THE CANADIAN CONFERENCE
OF
LEGISLATIVE OMBUDSMEN — 1977

LE
PROCES-VERBAL
DE LA
CONFERENCE CANADIENNE
DES
OMBUDSMEN LEGISLATIFS — 1977

"The Ombudsman Plan . . .
An Extension of Democracy?"

"Le régime de l'Ombudsman . . .
un prolongement de la démocratie?"

Toronto, Ontario

September 12 — 16, 1977

du 12 au 16 septembre 1977

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INTRODUCTION

The Ontario Ombudsman's Office was honoured to host the Canadian Conference of Legislative Ombudsmen - 1977, which took place in Toronto from September 12th to September 16th. This exciting event was the culmination of almost one year of planning and preparation, beginning with the invitation extended by me and approved by the Government in the Autumn of 1976.

Immediately upon my return from the International Conference, I constituted a committee to assist me in planning the Canadian Conference of Legislative Ombudsmen as follows:

Brian Goodman (Chairman)
Director of Investigations

Ken Cavanagh
Director of Communications

Glenn Hainey
Executive Assistant to the Office of the
Ombudsman

W. Niels Ortved
Special Consultant to the Ombudsman.

After meeting with the Directors of my Office and consulting with various Canadian Legislative Ombudsmen and their assistants, the Committee and I collaborated to devise a theme and program which we hoped would meet the following three criteria: first, that the conference be a learning experience for the Ombudsmen and their assistants and that the topics to be discussed provide a fresh understanding of our function; second, that there be representation and participation from all parts of Canada, and especially from those jurisdictions with a Legislative Ombudsman Office; third, that as hosts, the staff of the Ontario Ombudsman's Office meet as many of their colleagues in the other Canadian offices as possible and take part in as much of the Conference as their schedules would permit.

The theme of the Conference was "The Ombudsman Plan ... an Extension of Democracy?". At the formal sessions of the Conference, expert panels consisting in the main of non-Ombudsman personnel considered the six principal relationships and functions of the Ombudsman as follows:

"The Ombudsman - the Person or the Function?"

"The Ombudsman and Access to Information"

"The Ombudsman and the Legislature"

"The Ombudsman and the Media"

"The Ombudsman and the Civil Service"

"The Ombudsman as Investigator".

It will be appreciated that the various topics considered fit rather nicely under the umbrella theme. Following an opening presentation by each of the panelists, including the panel chairmen, the topic was opened to questions and comments from the delegates and observers. This proved to be an interesting format.

I am pleased to report that we were able to attract delegates and participants from every jurisdiction in Canada which has an ombudsman system. The Conference was attended by all Canadian legislative Ombudsmen with the exception of David Tickell, Ombudsman for Saskatchewan, who unfortunately was required at the last moment to cancel his plans to attend. The Saskatchewan office was, however, ably represented by Messrs. Kenn Barker and Gordon Mayer. The French speaking participants were invited to deliver their remarks in French, and copies of the translations of their presentations were made available to English speaking delegates, participants and observers. Delegates and participants from the Province of Quebec took part in five of the six panels. In addition, many of the English speaking panelists and other participants delivered at least a portion of their remarks in the French language.

On Sunday, September 11th, a very worthwhile meeting of assistants to Ombudsmen was held at our offices. Items discussed included the role to be played by assistants, and such matters as jurisdiction, reporting procedures and communication between Provincial Ombudsman Offices.

The Conference was officially brought to order by me on the morning of Monday, September 12th. His Eminence George Bernard Cardinal Flahiff, C.S.B., D.D., the Archbishop of Winnipeg, delivered the Divine Invocation in both the English and French languages. In the remarks preceding the Invocation, His Eminence admonished the Ombudsmen of Canada to be "experts in humanity". He also said:

"The Ombudsman is unquestionably regarded as the champion of the little fellow. The greatest innovative feature of the Ombudsman's office is surely that it provides an effective recourse for those who otherwise because of their inexperience or their limited resources or their inauspicious status

might be trampled by an established bureaucracy which is certainly not evil but which is necessarily as unequipped to deal with the unpredictable human deviations as is the computer to interpret the faintest emotional overtone of its input. From this creative opportunity of being the spokesman for those who cannot adequately speak for themselves, there follows a capital challenge an Ombudsman faces.

"Certainly the Ombudsman must be technically and professionally competent and must shine for fairness and even-handed dealing whenever it is necessary to correct or to supplement the provisions of law or their administration. It seems to me nevertheless that the very highest and the most mandatory qualification is to be, besides all this, profoundly interested in and committed to the humanness of the human individual.

"..... The Ombudsman to my mind must be able to say, and adequate provision must be made for the Ombudsman to say effectively, with the Ancient Roman leader - I am a human being and nothing human is foreign to me."

Dr. Stuart Smith, M.P.P., Leader of the Opposition, Province of Ontario, extended an official welcome on behalf of all of the Members of the Legislature of Ontario to the Conference participants.

Roderick Lewis, Q.C., Clerk of the Legislative Assembly, Province of Ontario, introduced our keynote speaker, Sir Barnett Cocks, K.C.B., O.B.E., former Clerk of the House of Commons Westminster, London, England. Sir Barnett's remarks were entitled "An Acceptance of Individuality", and the following brief excerpt will give you some idea of the thought-provoking and stimulating manner by which he treated the subject.

"When a new institution is established there is, after the initial welcome, an underlying fear in many hearts, or at least in the more timorous among us. There is a feeling that its success may be conceded up to a point - and approved of. But supposing its success goes beyond that point? Then the timorous soul begins to feel insecure. What have we done? Has the Ombudsman taken too much on his shoulders? Weren't things happier before he undertook this mighty task of dealing with the

grievances of eight million citizens? There is a standard criticism about most new foundations which is rooted in the feeling of insecurity of those who voice the criticism: 'Too big and impersonal - it may overwhelm us all.' Yet when we analyse the objection there is no reason why a large establishment should cease to be personal and inevitably become impersonal as it grows. The universities, the armed forces, the churches and even Parliament itself are all large but remain institutions where the individual counts."

A discussion of the keynote address was led by Prof. Donald C. Rowat, Department of Political Science, Carleton University, Ottawa. Prof. Rowat is a well known author on the subject of ombudsmanship.

On the afternoon of Monday, September 12th, the following Conference participants considered the subject of "The Ombudsman - the Person or the Function?":

Panel Chairman: Dr. Bernard Frank, Chairman
Ombudsman Committee
International Bar Association
Allentown, Pennsylvania, U.S.A.

Panelists: Dr. Harry D. Smith
Ombudsman of Nova Scotia

Dr. Luce Patenaude, Q.C.
Le Protecteur du Citoyen
Province of Quebec

Alex B. Weir
Solicitor to the
Ombudsman of Alberta

Brian P. Goodman
Director of Investigations
Ombudsman of Ontario.

The panelists addressed themselves to the relative importance of the personality of the Ombudsman as compared to the functions which the Ombudsman and his or her assistants perform - especially in a large jurisdiction.

Dr. Luce Patenaude, Q.C., le Protecteur du Citoyen for the Province of Quebec, expressed her thoughts on the subject as follows:

"In my opinion, the citizen views the Ombudsman, above all, as the INSTITUTION. It is only under exceptional circumstances that the citizen will refer to the person - for example, at the time of the Ombudsman's appointment because the attendant publicity had placed him in the limelight, through an "accident of nature", and so on and so on. This, at least is the case with the citizens of Quebec. ...

"One could argue that the Ombudsman as a person interests those citizens who expect to be greeted by the Ombudsman himself when they come to his office or call him. But here again, this expectation, to my mind, has nothing to do with the personality of the person holding the title, but rather, it relates unconsciously to the fact that the Ombudsman symbolises the authority and represents the INSTITUTION. What the complainant wants is not so much to see the Ombudsman in the flesh, but to see his case studied by him. So it suffices to explain to the complainant that his chances of succeeding are not all lost due to the Ombudsman's absence.

"The importance of the Ombudsman as a person is not so much conveyed through his direct contacts with citizens, but rather through the functioning of the INSTITUTION."

The year 1977 saw the retirement from office of Sir Guy Powles, Chief Ombudsman for New Zealand, and the first Legislative Ombudsman in the British Commonwealth. At the conclusion of the Monday afternoon session, I introduced the following resolution which was subsequently signed by all the Canadian Legislative Ombudsmen or their representatives:

BE IT RESOLVED:

WHEREAS Sir Guy Powles was Ombudsman for New Zealand from October 31, 1962 to April 5, 1977;

AND WHEREAS Sir Guy so distinguished himself and the Ombudsman institution that his colleagues affectionately referred to him as Dean of Ombudsmen;

BE IT THEREFORE RESOLVED that the delegates to the 1977 Canadian Conference of Legislative Ombudsmen express their sincere gratitude to Sir Guy for the immense contribution he has made to ombudsmanship around the world.

The signed resolution inscribed on parchment paper was later sent to Sir Guy.

On the morning of Tuesday, September 13th, the topic for consideration by the Conference was "The Ombudsman and Access to Information". The following panelists addressed themselves to such matters as the desirability for freedom of information legislation both on a national and provincial level, and the effect, if any, that this would have on the operation of the office of ombudsman.

Panel Chairman: The Honourable John N. Turner, P.C., Q.C.
Toronto, Ontario

Panelists: Gerald W. Baldwin, Q.C., M.P.
Peace River
Province of Alberta

Donald C. MacDonald, M.P.P.
York South
Province of Ontario

Margaret Campbell, M.P.P.
St. George
Province of Ontario.

In this regard, The Honourable John N. Turner, P.C., Q.C. made the following comments:

"I feel that the role of the Ombudsman, having a problem focus, could be made more effective for its expertise and familiarity with the intricacies of the bureaucracy unknown to the average citizen, if more of the legislative and regulatory process were open under a freedom of information statute.

"But the exercise of the Ombudsman's function - solving problems for citizens - is no substitute for freedom of information. Freedom of information depends essentially on a citizen's being able to approach his government and find out what a statute says or what a regulation says. It does not necessarily involve administrative assistance. A citizen should be able to ask for the information with no intervening Ombudsman, no intervening Member of Parliament, although the Ombudsman of course could be of assistance. What I'm saying is that freedom of information implies that open government is an end in itself, and should be independent from the Ombudsman's function."

It was unfortunate that the Honourable Garde B. Gardom, C.M.L.A., Attorney General for the Province of British Columbia, was required, at the last moment, to cancel his participation on the

above panel. However, both Mr. Richard H. Vogel, Deputy Attorney General, and Mr. Geoff Hutt of that Ministry, were able to attend the Conference as observers. I am extremely grateful to Margaret Campbell, Q.C., M.P.P., for agreeing, on very short notice, to take Mr. Gardom's place on the panel.

Immediately following lunch on September 13th and prior to the commencement of the afternoon proceedings, Mr. Joseph Berubé, the Ombudsman for New Brunswick, at my invitation, delivered a brief report on his investigation of a complaint against a member of the Fredericton Police Force. The case study was an interesting example of a complaint against municipal government, New Brunswick and Nova Scotia being the only two provinces where the Legislature has granted such authority to the Ombudsman.

At the Tuesday afternoon's session, the topic for discussion was "The Ombudsman and the Legislature", including the role of the Ombudsman vis-a-vis the elected member of the Legislature and the desirability of a jurisdiction having a Select Committee on the Ombudsman. The panelists were:

Panel Chairman: Sir Barnett Cocks, K.C.B., O.B.E.
Former Clerk of the House of
Commons Westminster, London, England

Panelists: The Honourable Mr. Justice C.W. Clement
Supreme Court Appeal Division
Province of Alberta

Stephen H. Lewis, M.P.P.
Leader of the New Democratic Party
Province of Ontario

Gérard D. Lévesque, M.N.A.
Leader of the Opposition
Province of Quebec

Norman Webster
Legislative Journalist
Globe and Mail, Toronto

One of the panelists, Gérard D. Lévesque, made the following observations:

"In Quebec, the Members of the National Assembly have never regarded the Ombudsman as being an institution which would limit their responsibilities towards their constituents. On the contrary, a number of members who, after having repeatedly appealed to a department concerning a problem on behalf of a constituent, have, on their own initiative, referred the case to the Ombudsman. This is a current

practice and altogether normal. Citizens who have a problem will quite naturally address themselves to their Member and I fail to see why he would deprive himself of the Ombudsman's services to help him rectify the legitimate complaints of his constituents ...

"We could perhaps consider improving the cooperation between the Members and the Ombudsman. I do not believe, however, that it would be desirable to involve the Members in any way whatsoever in the complaints which are submitted to the Ombudsman and, even less, in the exercise of the powers of investigation and the recommendations which are delegated to him.

"The Ombudsman Institution has a significance which is proper to it and one should respect the principle of the Independence of the Public Protector."

On the afternoon of Wednesday, September 14th, a Conference business session was held, chaired by Mr. Kenn Barker, Assistant Ombudsman for Saskatchewan. Dr. Randall E. Ivany, Ombudsman of Alberta, delivered a report on the International Ombudsman Steering Committee meetings held in Paris, France from May 9th through May 12th, 1977. The Steering Committee was established at the business session of the First International Ombudsman Conference held in Edmonton, Alberta, from September 6th to 10th, 1976. Those persons comprising the Steering Committee were named as follows:

Southern Region

Mr. Justice Moti Tikaram (Fiji)
Mr. Oliver Dixon (Western Australia)
Judge Frederick Chomba (Zambia)

European Region

Mr. Nordskov Nielsen (Denmark)
M. Aimé Paquet (France)
Frau Lieselotte Berger (Germany)

North American Region

Dr. Randall Ivany (Alberta, Canada,
Chairman)
Mr. Arthur Maloney, Q.C. (Ontario, Canada)
Mr. Frank Flavin (Alaska, U.S.A.)

Dr. Ivany reported that it was agreed by the Steering Committee that Jerusalem would be the site of the next International Ombudsman Conference, which will likely be held in the Autumn of 1980, and that the theme of the Conference would be

"The Ombudsman as Mediator, Fighter and Reformer".

It was also agreed at the Edmonton Conference that the Steering Committee be responsible for considering the question of establishing an "Ombudsman Institute" whose functions might include cataloguing and storing information on the ombudsman experience in philosophy, methods and results, creating central archives of material for research, and establishing information centres for interested governments and observers. Dr. Ivany reported that, with regard to the Ombudsman Institute, the Steering Committee meeting in Paris endorsed the proposal from the University of Alberta at Edmonton and further indicated that it would invite and welcome the establishment of a parallel institution in Sweden, in due time. Additionally, he related that the Committee would be pleased to receive and to consider in due time proposals designed especially to meet the needs of the Third World in this field. Dr. Ivany further reported that at the Paris meeting Dr. I.E. Nebenzahl, State Comptroller and Commissioner for Complaints from the Public for Israel, as the host of the next international conference, was appointed Vice-Chairman of the International Ombudsman Steering Committee.

Prof. Peter Freeman of the Faculty of Law, University of Alberta, delivered a brief report on the establishment, organization and purposes of the International Ombudsman Institute, whose objects are the following:

- (1) to promote the concept of ombudsman and to encourage its development throughout the world;
- (2) to encourage and support research and study into the office of ombudsman;
- (3) to develop and operate educational programs for ombudsmen and other interested people;
- (4) to collect, store and distribute information and research about the institution of the ombudsman;
- (5) to develop and operate programs enabling an exchange of information and experience between ombudsmen throughout the world;
- (6) to provide scholarships, fellowships, grants and exchange privileges to individuals throughout the world to encourage the development, study and research into the institution of the ombudsman;
- (7) such other matters that are necessary to fill the above objectives.

At this point I should report that we have recently received word that Sir Guy Powles, formerly Chief Ombudsman for New Zealand, will be officially attached to the Institute as "Ombudsman in Residence" between May and November of 1978. We are all very excited about this development.

The next item discussed by the delegates at the business session was the location of the 1978 National Conference. Mr. George W. Maltby, the Ombudsman of Manitoba, tentatively invited the Conference delegates to Winnipeg in 1978. It was moved and carried that a Steering Committee of 3 delegates be appointed by Mr. Maltby to assist him in his aspiration to be host, to give any further assistance to him that he might ask of them in the event his invitation could be carried through, and to determine the site of the next National Conference in the event Manitoba was not available. It was agreed that the Steering Committee, among its other responsibilities, should decide after consultation, what would be the most appropriate time period and date for the Conference.

It was further agreed that Dr. Ivany would meet with Mr. Frank Flavin, the Ombudsman of Alaska, with a view to exploring the possibility of the establishment of a North-American Ombudsman Association and a North-American Ombudsman Conference before the second international one.

Dr. Bernard Frank, Chairman of the Ombudsman Committee of the International Bar Association presented a report on the recent activities and plans of that Committee. Finally, it was agreed that the following resolution, moved by Mr. Joseph Berubé, the Ombudsman of New Brunswick, be referred to the Steering Committee for the next national conference, which Committee is to report back to the delegates at the next national conference with recommendations:

that a Canadian Legislative Ombudsman and/or Counsel, preparatory to any judicial review of his or her legislation, be encouraged to consult with his or her colleagues with a view to ensuring that the fullest possible hearing is accorded in such a review.

I am pleased to report that it has been confirmed that the national conference for 1978 will be held in Winnipeg, Manitoba.

Since it was not possible to complete the conference business at the session on Wednesday afternoon, it was agreed to continue our discussion following the Friday luncheon.

On the morning of Thursday, September 15th, the following panelists considered the question of "The Ombudsman and the Media":

Panel Chairman: Ken Cavanagh
Director of Communications
Ombudsman of Ontario

Panelists: Claude Ryan, Publisher
Le Devoir, Montreal

The Honourable Judy LaMarsh, P.C., Q.C.
Toronto, Ontario

Cameron Smith
Assistant to the Editor
The Globe & Mail, Toronto

Robert Cooper
CBC Television Ombudsman
Toronto, Ontario

Borden Spears
Senior Editor and
Editorial Ombudsman
The Toronto Star. Toronto.

The panelists and the conference participants discussed such issues as the relationship between the Legislative Ombudsman and the Media, and the need for an Ombudsman for the Media.

The Honourable Judy LaMarsh, P.C., Q.C., set forth the reasons why she thought the establishment of the Office of Media Ombudsman was essential, and said the following about the objects of such an Office:

"The purpose of a media ombudsman would be twofold really. One is to protect the media from incursions by government and that may or may not be terribly important in the future of Canada. And the other one of course is similar to the statutory ombudsman which is to protect the individual from the power of the media. We know that there are considerable problems in trying to set up a national media ombudsman because most of the press is dealt with on a provincial basis. If there were a provincial ombudsman it perhaps would be much more responsible to the public ..."

Other panelists, such as Cameron Smith, Assistant to the Editor of the Globe and Mail, spoke against the concept of an Ombudsman for the media:

"I say let there be laws limiting the press. There are such laws now - laws of libel, laws of obscenity, laws against divulging official secrets, laws affecting defence, treason, sedition, laws against counselling a crime, laws concerning contempt of court, laws governing what parts of trial can be reported - a whole raft of laws. Now if those laws are not stringent enough, if they don't offer the public enough protection, tighten them. But for God's sake, let it be the law that rules and not some state agent."

Following the Thursday luncheon, Dr. Ivany made some interesting observations concerning his report on the Calgary Remand and Detention Centre.

At the Thursday afternoon session, the Conference considered the relationship between and the attitudes of "The Ombudsman and the Civil Service". The panelists were:

Panel Chairman: Arthur J. Herridge
Assistant Deputy Minister of
Natural Resources
Province of Ontario

Panelists: Robert Normand
Deputy Minister of Inter-
governmental Affairs
Province of Quebec

James E. Dixon
Public Service Commissioner
Province of Alberta

Glenn R. Thompson
Deputy Minister of Correctional
Services
Province of Ontario

W. Niels Ortved
Special Consultant to
Ombudsman of Ontario.

I am grateful to Mr. Arthur J. Herridge, Assistant Deputy Minister, Resources and Recreation, Ministry of Natural Resources, who chaired the above panel in the place of Dr. J. Keith Reynolds, Deputy Minister of that Ministry, who was unfortunately unable to attend due to illness.

On the subject of the Ombudsman and the Civil Service, Mr. Ortved said, in part:

"Still dealing with the conceptual aspect of this relationship, I would next like to turn to a consideration of the Ombudsman's office from the point of view of the Civil Service. How should it be regarded? It is fundamental that both the Ombudsman's office and the Civil Service are apolitical and impartial in nature. Each is staffed by those dedicated to the service of the public within the confines of the established policies and programmes of the Legislature, and neither has any ulterior political axe to grind. Bearing in mind my earlier comments about mistakes necessarily occurring from time to time, it is suggested that those occasions on which the Ombudsman's ex post facto review enables such mistakes to be brought to the attention of the Civil Service should be viewed as simply the operation of another institutional check to guard against error and as such very sincerely welcomed by the Civil Service and is in no way viewed as a threat to its authority."

The final conference session was held on the morning of Friday, September 16th, at which time the following panelists considered the principal role of the Ombudsman, namely "The Ombudsman as Investigator":

Panel Chairman: His Honour Chief Judge Ernest
C. Boychuk, Q.C.
Province of Saskatchewan

Panelists: Gordon Earle
Deputy Ombudsman
Province of Nova Scotia

Charles Ferris
Solicitor to the Ombudsman
Province of New Brunswick

M. Jean-Marc Ducharme
Assistant du Protecteur du Citoyen
Province of Quebec

Eric Moody
Assistant Director of Investigations
Ombudsman of Ontario

Each panelist, including the chairman, gave one or two case studies, concentrating on the techniques of investigation used in each case.

At the continuation of the business session completed following the Friday luncheon, the following resolution was presented and carried:

WHEREAS the ombudsman concept continues to expand throughout the world;

AND WHEREAS 1977 marks the tenth anniversary of the introduction of the concept in Canada;

AND WHEREAS all citizens of Canada should have access to an Ombudsman to deal with grievances against governmental authorities;

THEREFORE be it resolved that the Canadian National Ombudsman Conference welcomes the establishment of the Office of an Ombudsman in British Columbia by the British Columbia Legislative Assembly and encourages debate and discussion within the Legislatures and Parliaments of Canada of proposals that would extend the ombudsman concept to all citizens of Canada for all levels of government.

In addition it was moved and carried that the Conference agree in principle to the idea of a staff exchange program and that the setting up of a pilot project be commenced.

ACKNOWLEDGMENTS

Space does not permit me to acknowledge my gratitude to all those who contributed to the success of the Conference. Permit me, however, to make a few observations and extend some very special notes of appreciation.

I am especially pleased that Mr. Frank Flavin, the Ombudsman for the State of Alaska, and Mr. Ken Bratton, a member of the staff of the Commissioner for Local Administration in Edinburgh, Scotland, were able to attend our Conference as observers.

I would like to thank the Members of the Select Committee of the Legislature of Ontario on the Ombudsman for the tour and reception hosted by them and for the interest that they showed in the entire Conference proceedings, where they were represented throughout. There was not a conference event at which the Committee was not represented.

Acknowledgment is also gratefully given to Her Honour the Lieutenant-Governor of Ontario, The Honourable Pauline M. McGibbon, for the hospitality extended to our guests.

I would like to thank The Honourable William G. Davis, Q.C., Premier of Ontario, for the thought-provoking remarks which he delivered on the subject of national unity following the reception and dinner hosted by me. I wish also to thank him for the magnificent dinner hosted by the Government on Tuesday, September 13th at Ontario Place.

I wish to acknowledge with appreciation the official welcome extended by Dr. Stuart Smith, M.P.P., Leader of the Opposition, on behalf of all the Members of the Legislature of Ontario to the Conference participants, and the contribution made by Stephen H. Lewis, M.P.P., Leader of the New Democratic Party, to the panel on "The Ombudsman and the Legislature".

A special thanks to Roderick Lewis, Q.C., Clerk of the Legislative Assembly, for introducing the keynote speaker, and to all the distinguished Clergymen of many faiths who officiated at our proceedings.

I would like to express my appreciation to the Corporation of the Municipality of Metropolitan Toronto and Paul V. Godfrey, Chairman of the Council, for hosting the Monday luncheon.

I wish to acknowledge the assistance provided us by Mr. Walter A. Borosa, Director of Protocol, Protocol Services Branch, Ministry of Government Services, and by the employees of that Branch. Thanks are due also to the O.P.P. for assisting us with our security arrangements and to the local, regional and national media for the extensive coverage which the Conference received. I am grateful to the members of the academic community for their interest and participation in the Conference.

The Conference provided an opportunity to meet old friends and make new ones and to examine and re-appraise the ombudsman institution in Canada - where it's been, where it is and where it is likely to go. I am confident that all who participated in the Conference benefited from it and have indeed gained a fresh understanding of the Office of the Legislative Ombudsman.

Arthur Maloney, Q.C.

Ombudsman of Ontario

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 12, 1977

Morning Session

CONFERENCE IS BROUGHT TO ORDER

ARTHUR MALONEY, Q.C.
Ombudsman of Ontario

With the new gavel with which I was officially presented last night at the reception in the Campbell House, I bring our meeting to order. (bangs gavel)

The conference is greatly honoured that the Divine Invocation which we are all assured must necessarily precede so important a national event should be given by His Eminence the Cardinal, Archbishop of Winnipeg, Cardinal Flahiff. The Cardinal was born in Paris. Now if you have visions of a newborn infant that came into life in some fine hospital on the Champs Elysées you should change your thinking because he was born in Paris, Ontario.

From the year 1935 through to 1954, he was Professor of History at the Pontifical Institute of Medieval Studies. It was as Father Flahiff, as he then was, that I and hundreds of students at St. Michael's College grew to know, to admire and to respect him. This was of course before he became the Superior General of the Basilian Fathers of the World, before he became in 1961 the Archbishop of Winnipeg and of course long before 1969 when on April 28th, he was elevated by Pope Paul VI to the College of Cardinals. But as His Eminence proceeded through all these increasingly important stages of service, there were certain constant qualities for which he was renowned. The qualities of humility and simplicity that made him beloved at St. Michael's College years ago and that make him beloved today in his new province, Manitoba, and his new city, Winnipeg. His Eminence the Cardinal.

DIVINE INVOCATION

HIS EMINENCE GEORGE BERNARD
CARDINAL FLAHIFF, C.S.B., D.D.
The Archbishop of Winnipeg

Mr. Chairman, official representatives at this Fifth Canadian Conference, and my dear friends all - I am grateful for Mr. Maloney's kind introduction, the touching things he says. I think my first prayer should be that God will forgive him for exaggerations.

I am very deeply touched by, and grateful for, the honour conferred upon me by the invitation to pronounce the Divine Invocation at this the Fifth Canadian Conference of Legislative Ombudsmen.

Il serait bien prétentieux de ma part de profiter d'une telle occasion pour m'adresser, mais brièvement, à l'aspect professionnel de l'Office de l'Ombudsman. Mais peut-être me serait-il permis de vous dire, en quelques mots au moins, comment personnellement, avec d'autres citoyens ordinaires, je vois le rôle de l'Ombudsman.

(It would be quite presumptuous of me to take this opportunity to speak, however briefly, on the professional aspect of the Office of the Ombudsman. But perhaps I could be allowed to tell you, in a few words at least, how I personally, along with other ordinary citizens, see the role of the Ombudsman.)

The Ombudsman is unquestionably regarded as the champion of the little fellow. The greatest innovative feature of the Ombudsman's office is surely that it provides an effective recourse for those who otherwise because of their inexperience or their limited resources or their inauspicious status might be trampled by an established bureaucracy which is certainly not evil but which is necessarily as unequipped to deal with the unpredictable human deviations as is the computer to interpret the faintest emotional overtone of its input. From this creative opportunity of being the spokesman for those who cannot adequately speak for themselves, there follows the capital challenge an Ombudsman faces.

Certainly the Ombudsman must be technically and professionally competent and must strive for fairness and even-handed dealings whenever it is necessary to correct or to supplement the provisions of law or their administration. It seems to me nevertheless that the very highest and the most mandatory qualification is to be besides all this, profoundly interested in and committed to the humanness of the human individual.

In an address to the United Nations in 1965, my spiritual leader, Pope Paul VI exclaimed in a prayer that seemed to be addressed both to God Himself and to his listeners at that world assembly. "Give us", he said, "oh give us experts in humanity." And from this it seems to me follows the scope of the Ombudsman's office. Experts will work out the organizational details; your conference is devoted at least in part to that. But I do not believe what I am about to define that scope as being, is merely a pious abstract platitude. The Ombudsman to my mind must be able to say - and adequate provision must be made for the Ombudsman to say effectively - with the ancient Roman leader - "I am a human being and nothing human is foreign to me." It is therefore with deep respect for the office, with high hopes for the creative transformation of the very texture of our society, and with keen awareness of the complex problems it must face that I invoke the blessing of God on this new endeavour and in a special way on this Fifth Canadian Conference of Legislative Ombudsmen that will attempt to further the new endeavour of the Ombudsman's office in

our country, and render it ever more effective. Prions le Seigneur.

Lord God who created all human beings to be of one blood and to pursue one high calling in justice and in truth, look with favour on all now called to defend those of whom you yourself once said - "because of the cries of the poor and the afflicted, I will arise now in my power". Give them oh Lord wisdom to discern, courage to speak forth, and persistence to pursue righteousness. Lord, hear this our prayer. Amen.

OFFICIAL WELCOME BY CONFERENCE HOST

ARTHUR MALONEY, Q.C.

Thank you Your Eminence for your magnificent spiritual message and for your Divine Invocation.

The next item on our agenda calls for an official welcome on behalf of the Ombudsman's Office and Staff of Ontario to all of you here present. It gives me very great pleasure to welcome all of you from every province of our country to our National Conference. I hope you will agree that an excellent program has been prepared for all of us by Brian Goodman and by Ken Cavanagh, by Glenn Hainey, by Niels Ortved, and the others who have assisted them, like John Beaufoy, in the preparation of the proceedings that are to continue for the ensuing days.

The subjects to be discussed over the next five days will give all of us a fresh understanding of our function. I'm extremely grateful to the distinguished panelists who have agreed to participate and to give us the benefit of their knowledge and experience. A fresh understanding of our function has been acquired by me already in the very opening minutes of our conference by the inspiring message of the Cardinal.

Je suis très heureux de souhaiter la bienvenue à vous tous qui êtes venus de tous les coins du Canada participer à la Conférence nationale des Ombudsmen. Je suis sûr que vous êtes d'accord avec moi que le programme que nous avons préparé nous fera passer une semaine des plus agréables. Nos discussions pendant les cinq jours prochains nous donneront une nouvelle perspective du rôle que nous avons à remplir. Je suis très reconnaissant à tous ceux qui ont bien voulu participer au panel pour partager avec nous les fruits de leur connaissance et de leur expérience.

I want to welcome specifically the Ombudsmen of the other provinces who are able to come to Toronto to participate. And I would ask them if they would be good enough to stand as I mention them. Dr. Randall Ivany of Alberta; Mr. George Maltby of

Manitoba. Unfortunately the Ombudsman from the province of Saskatchewan was unable to attend. He was required to cancel his plan to be here at very much the last moment and he is represented by his Assistant Ken Barker. Madame Luce Patenaude of the province of Québec; Mr. Joseph Bérubé of the province of New Brunswick; Dr. Harry Smith of the province of Nova Scotia; Ambrose Peddle of Newfoundland.

In the audience is Frank Flavin who is the Ombudsman from Alaska, and one of the four legislative Ombudsmen in the United States of America, and the only one who was able to accept our invitation to join us here. Also in the audience is a representative of the Parliamentary Commissioner in Scotland, Mr. Ken Bratten. We welcome you too, Ken. At the federal level the Commissioner of Official Languages is represented this morning by Mr. George Tsai. We welcome you George. And also, Inger Hansen, who has served with such great distinction as Commissioner for the prisoners who serve sentences in the federal prison system. We welcome all of you. We welcome also in addition to the names I have mentioned, all of your aides, your advisors and your assistants who have accompanied you here.

I want to thank in advance all the panelists - the very, very distinguished panelists that have agreed to participate in the week's activities. One unfortunate cancellation is the Attorney-General of British Columbia, the Honourable Garde E. Gardom who because the Premier is leaving the province to go to Europe, requires that the Attorney-General remain in his province. And we are extremely fortunate that on very, very short notice and recognizing our dilemma and our difficulty, I was able to recruit the very dedicated member of the Legislature, our own Legislature, to take his place, and that's Margaret Campbell, Q.C., M.P.P. for St. George, and I want to thank you Margaret, on behalf of all of us, for your willingness to undertake that responsibility on such very short notice.

I want to welcome in addition to Mrs. Campbell, the other members of the Select Committee of the Ombudsman who are present here today. They're on the platform with us and I'm extremely grateful to all of you for your great interest.

I hope all of you present will participate in the general discussion that will follow the various panels. I hope you will feel free to question our panelists or to make a statement of your own position or to do both. Your contribution at this stage will be of great importance.

Je vous encourage à participer activement aux discussions qui suivront les panels. Soyez tout à fait à l'aise de poser des questions aux membres du panel ou encore d'énoncer vos opinions personnelles. Votre collaboration aux discussions sera d'une valeur inestimable.

For our conference to succeed, it is imperative we adhere to our time schedule. I will try to set the example by concluding my welcoming remarks now, especially since I'll be able to speak to you again on Thursday night at our dinner and on Friday at the closing. I'll revert now to the program.

I now have the great pleasure and privilege of calling on a distinguished member of the Ontario Legislature to bring to us the greetings and good wishes of every member of the Legislature of every political party. It's not often that the Leader of the Opposition, Dr. Smith, is able to speak on behalf of Bill Davis and Stephen Lewis and himself, but that's exactly what he's going to do this morning. Dr. Smith is the Leader of the Opposition, the Leader of the Liberal Party. When Bill Davis announced the intention of the government in May of 1975 to create the Office of Ombudsman, Bob Nixon, who was then the Leader of the Liberal Party and the Leader of the Opposition spoke immediately in support of the concept and of the plan, as did Stephen Lewis, the Leader of the New Democratic Party. And the support that was originally expressed by Bob Nixon has been reiterated time and time again by his successor, Dr. Stuart Smith, who it is now my privilege to invite to the podium.

OFFICIAL WELCOME - MEMBERS OF THE LEGISLATURE
OF ONTARIO TO CONFERENCE PARTICIPANTS

DR. STUART SMITH, M.P.P.
Leader of the Opposition
Province of Ontario

Thank you very much Mr. Chairman, Your Eminence, distinguished Ombudsmen, distinguished colleagues from the Legislature, friends. I'm greatly honoured to be able to stand here before you and bring greetings not only from Bill Davis and Stephen Lewis but as Arthur Maloney says, every member of the Legislature of Ontario. We've grown to have a deep respect not just for Mr. Maloney because I think you know that his distinguished record commanded respect long before he took on this public responsibility, but for the office itself. And I think we have our teething problems at the moment in Ontario as we try to work out the relationship of the Ombudsman's office to the elected representatives of the people. And I think that this conference can go a long way toward helping us and helping everyone in Canada, and elsewhere, in determining just what that relationship ought to be.

C'est très intéressant de voir qu'en théorie les démocraties ne changent pas pendant les époques, mais en pratique, ils changent beaucoup; et en pratique il faut trouver de nouveaux moyens pour notre citoyen ordinaire de s'exprimer sur les sujets très di-

vers qui touchent les vies de tous nos citoyens. C'est très difficile de trouver exactement où l'opposition, dans un sens parlementaire, s'arrête et la fonction de l'Ombudsman peut commencer. C'est très difficile de choisir les points exacts où les juges s'arrêtent et où il faut avoir un Ombudsman pour s'occuper des problèmes des citoyens.

(It is very interesting to note that in theory, democracies do not change over the years, but on the practical level, they change a great deal and we must find new practical ways for our ordinary citizens to express their concerns about the many varied subjects which affect the lives of all our citizens. It is very difficult to determine exactly where the opposition, in the parliamentary sense, ends and the function of the Ombudsman begins. It is very difficult to find the exact point where judges end and where we need an Ombudsman to deal with citizen problems.)

Finding these boundaries between where the judiciary and the Opposition leave off and where a new function has to start, such as an Ombudsman, is very difficult. In deciding at what point the Ombudsman has become a substitute for the parliamentary opposition is also very difficult. And I know you've all struggled with this in your own provinces and in your own countries. And I look forward to the guidance you can give us. Every one of us in the Legislature looks forward to this.

I feel that there are other ways in which democracy has changed in its functioning. Ombudsmen are one very visible component of the change that has occurred in the practice of democracy. And I look forward to the comments that we'll hear from our Guest Speaker this morning. But there are other ways. There are innumerable hearings now before all kinds of quasi-judicial boards, regulatory agencies, environmental appeal boards, municipal boards making decisions on whether or not zoning changes are to take place, municipal bonds are to be issued, or whole tracts of land are to be put to one use or another. And in front of all these boards we find that there are the powerful who can come with their professional expertise and their hired legal help, and there are frequently the weak, the citizens that you have to protect in their dealings with government generally. And I have a feeling that we're going to find that in the practice of democracy as these boards become more and more numerous and more and more important and I suspect they will become so, that Ombudsmen will find themselves with yet another function, that of deciding how to give proper voice and representation to the various citizens and citizens groups that wish to appear in front of these boards. And I would not be surprised to find that it will be your decision or decisions of people like you that will decide how money should be given for the sake of a sort of legal aid for people that are trying to appear in front of regulatory agencies or appeal boards of various kinds. It's a whole new area that I suspect will be open-

ing up for us, and I look forward to your deliberations on that and I'm sure that everything you do will touch on some of these areas.

There are other new areas as well.

Si on veut voir la question de l'information et la liberté d'acquérir l'information des gouvernements, c'est une chose très difficile. Et maintenant, on s'occupe de cela dans notre pays et aussi dans notre province. Aux Etats-Unis, il y a des lois qui garantissent la liberté d'obtenir l'information pour le citoyen et c'est quelque chose tellement important, que moi, comme député en opposition, j'ai des gens qui peuvent m'assister, mais sans information, il y a très peu qu'on peut faire.

(The question of information and the freedom to obtain information from governments is a very difficult one. In Canada and in Ontario we are now dealing with this question. In the United States, there are laws which guarantee the citizen freedom of information. This is a question of such importance that I, as an opposition Member of Parliament, have people who can assist me, but without information, there is very little that can be done.)

This whole matter of freedom of information is again one which I suspect will involve you one way or another. Either you will find yourselves making use of the information or you will find yourselves as the agent that decides what kind of information can be given out, or you will find yourselves as a court of last resort when a member of the Assembly decides that he's being denied information. But one way or another I suspect you're going to find your functions expanded rather than reduced as time goes by. As I said, the theory of democracy doesn't change but the practice does.

And I think you're here at an historic moment. I'm really looking forward to the results of your deliberations and I would like to draw my remarks to a close on that note. I should just point out that Arthur took the precaution of writing to me in his letter which very kindly asked me to speak here and gave me this honour, that I restrict my remarks to five minutes or so. And again just before I stood up he again mentioned the importance of keeping to schedule. And I wonder whether, perhaps, he has heard of one of my longer-winded efforts at which time when I finished and sat down I apologized to the chairman on the basis that I just didn't happen to have a watch. And he said "yes - but there was a calendar on the wall in front of you".

Rather than live up to Arthur Maloney's worst fears and expectations, I will draw my remarks to a close at this point. I wish you well in your deliberations, look forward to the results of your discussion and wish you every good wish possible from the members of the Legislature in the work you do on behalf of the

citizens of this country and the countries you represent. Thank you very much.

ARTHUR MALONEY

You'll notice that in my letter to Dr. Smith, I said five minutes or so. It's the 'or so' that gave him extra leeway but I must say you didn't take advantage of it Dr. Smith. You adhered to your time limit. Thank you for your message and thank you for your greetings on behalf of your colleagues in the Legislature.

You'll notice in the material that was given to you that we give you biographical sketches of virtually everyone who is participating in the proceedings for the next week. And the reason for that was to eliminate the necessity of spending time introducing all our various distinguished participants. And also to enable us to do greater justice to them because we were able to discuss their expertise and their background of experience at greater length. Included in your list of biographical material is a biographical note about the distinguished Clerk of the Legislature of Ontario. His father before him was a distinguished popular man, but I must say that Rod Lewis has carried on the great family tradition, and is one of the most respected, most esteemed gentlemen to adorn an office in Queen's Park. He's been a very great friend of the Office of the Ombudsman, has co-operated with us to the full. And we've invited him as Clerk of the Legislative Assembly to perform the honour of introducing a very distinguished man to all of us, our Keynote Speaker, Sir Barnett Cocks. And the reason Rod was selected, apart altogether from his own great personal qualities, was because he and Sir Barnett have been friends over a long period of time. I call upon the Clerk of the Legislative Assembly of Ontario, Mr. Roderick Lewis, Q.C. to introduce our Keynote Speaker.

INTRODUCTION OF KEYNOTE SPEAKER

RODERICK LEWIS, Q.C.
Clerk of the Legislative Assembly
Province of Ontario

Mr. Chairman, Your Eminence, friends from the Legislature, Ombudsmen, ladies and gentlemen. When my friend Arthur gave me the single honour of performing this delightful introduction, he was of course taking a considerable risk because having spent the last 31 years listening to other people make speeches, I could have said to myself, this is my chance you know, this is where I get my own back, but I'm not going to do that. As Dr. Smith has

pointed out, we have time strictures on us and I intend to adhere very strictly to that. In fact I doubt if I'll run to the time provided. It wouldn't be hard mind you, seriously, it wouldn't be hard to run well beyond the time allotted in introducing such a distinguished gentleman as I have the honour of doing this morning. Because his accomplishments are so many that to do them justice would take, really, a very considerable time. So that I will have to just touch the highlights as it were. And I know that you will have an opportunity of getting to know his accomplishments and his great abilities as the conference proceeds.

He was born in Devon in England and I think this is an indication of his great perspicacity because I can't think of a nicer place to be born. He was educated at Blundell School and Worcester College, Oxford. He joined the staff of the House of Commons in 1931 and about ten years later reached the Table in the House. In 1962 he was appointed The Clerk of the House of Commons of the United Kingdom. At approximately the same time or very shortly after, he was knighted by his Queen, an honour very richly deserved. Among his many accomplishments I can really recite just a few. He is Trustee of the History of Parliament and a member of the Association of Secretaries-General of Parliament from 1959 to 1975. He was President of the Governing Board, International Centre of Parliamentary Documentation, Geneva 1972. He was a member of the official House of Commons delegation to Australia and New Zealand in 1951. He attended the Central Africa Conference in Ghana in 1954 and '57, and Tonga in 1975. He has attended inter-parliamentary conferences representing his country on a number of occasions in Switzerland, Belgium, France and other countries. He attended the Commonwealth Parliamentary Conference on a number of occasions. He is to take part in the next one which will be taking place here in Canada starting at the end of this week. We are very happy to say he has twice visited Canada to attend meetings of the Association of Clerks at the Table, the latest one being just last year here in Ontario when we hosted the meetings. His abilities as an author are not only illustrated by the fact that he was Editor of the Sir Erskine May's Parliamentary Practice which is, to those of us who are concerned directly with the intricacies of parliamentary procedure, really the Bible. I mean when we are stumped in finding a precedent in our own records, Sir Erskine May's text (which is now in its 19th edition) is where we go. And Sir Barnett edited the 15th, 16th, 17th and 18th editions. In addition to that he has at least three books that have already been published, very successful books I may say. And I believe has at least one more, I think two more in preparation at the present time.

We are very glad that with him at this conference is his lovely wife, Lady Iris. I therefore, ladies and gentlemen, am most

appreciative of the great honour that I have in introducing to you Sir Barnett Cocks, K.C.B., O.B.E., or in other words, my very long time and very dear friend Barney.

KEYNOTE ADDRESS

SIR BARNETT COCKS, K.C.B., O.B.E.
Former Clerk of the House of Commons
Westminster, London, England

Mr. Chairman, Lord Eminence, Monsieur le Cardinal, Distinguished company of members of Parliament and learned counsel, so many distinguished people that it would take me a long time, I think, to list them. Thank you for listening and for inviting me to come to this great gathering in Toronto. I am no stranger to Toronto. Every time I come here, I admire it more and of course my oldest friend in this city, to whom I have just been talking, Mr. Roderick Lewis, modestly disclaimed his own qualities which I have no hesitation telling you, are greater than mine in the sense that when you travel around the world and all those countries he mentioned, Rod Lewis is as familiar there as he is in Toronto. We have a great trade union of parliamentary officials without whom of course Parliaments would not be served. In some countries they have crumbled and in the best of countries Parliaments have remained with the most stalwart service such as Rod Lewis has given to Ontario over many years. It has been a great experience as I say to come to Toronto.

Perhaps on the way here helped me understand what the Ombudsman is all about - I was flying across the Atlantic from London to Canada last March, when the words: "This is your Captain speaking" came over the intercom. Always a sombre beginning in the middle of the night in mid-Atlantic.

"I am very tired", he continued in even more sombre tones. Here we come across the difficulty of language; in England today you can say "I'm worn out - I'm exhausted - even I'm dead", but "very tired" has become a euphemism invented by the Press and applied to politicians, dating from a generation back when we had a Foreign Secretary who was frequently "very tired". It means "very drunk".

The Canadian Captain of the aircraft was not in that condition at all. He explained why we were flying eight hours behind schedule. Leaving Toronto the previous night and starting out across the ocean, he had been notified that a passenger had suddenly been taken dangerously ill. There were 400 other passengers to consider, and turning back to the nearest major airport, Montreal, would mean being caught by their curfew which prohibits taking

off till dawn. "I had to decide", said the Captain, "whether a human being counted more than time, money and missed appointments. After all", he added, "it might have been any one of you." That is really the basis of the Ombudsman's belief. "A human being counts more than the system. After all, it might be any one of you." It is a recognition of the importance of each individual.

An efficient system, an efficient undertaking does not suffer fools gladly. If they are no good, they must go. But where must they go? A country cannot disown responsibility, it has to cope with weakness, instability, old age, mental deficiency and human error. Perfection needs no help but governments have to allow for imperfections. Countries aware of their responsibilities have therefore found it convenient to have an Ombudsman to deal with the imperfections which beset us all, even those of the governmental services. It is nearly 30 years since we heard about the ideals of the United Nations. Perhaps it is not too out of date to recall Article 1 of the Universal Declaration of Human Rights, adopted unanimously by the United Nations on 10th December 1948;

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

That ideal, with one or two lapses, is in full operation in the countries of Western Europe; whenever we are tempted to return to a harsher code of conduct, we remind ourselves of the example set by Canada. I quote again, this time from the Ontario Commission on the Legislature which in December 1975 was able to declare:

Ontarians live in one of the most open societies on earth. By and large our citizens, including those who live in large urban areas, enjoy a measure of freedom which is no longer possible, for instance, in many American cities. We are free to walk the streets in safety, to express our opinions on almost any subject, and, either as individuals or in the form of a collective demonstration, to confront those who appear most likely to wield the power 'to get things done'. So it is a generally accepted fact that in an age of citizen involvement and participation, it is the people's right to approach the politician directly, often in an effort to circumvent the built-in defences of the bureaucratic system.

That was written, as I say, at the end of 1973, and I have not seen a more enlightened declaration on the rights of a citi-

zen, quite apart from the Commission's declaration on the rights of the Clerks at the Table and their independence of government control, the Clerk himself being accorded, in their recommendation, a status equivalent to that of a Deputy Minister.

Perhaps because of this exceptional freedom in Ontario, the need to appoint an Ombudsman came later than in many other parts of the world. It was not until March 1975 that the Speech from the Throne in your Parliament promised the appointment of an Ombudsman 'as a safeguard against the growing complexity of government and its relationship with the individual citizen' and as it is not till this year that we have the opportunity of studying the First Annual Report of the Ontario Ombudsman covering 1975 to 1976.

I know that numerical assessments have only a limited capacity to demonstrate the value of an office, but I shall give one figure. The flood of inquiries and grievances which reached the office of the Ombudsman by the end of October 1976 totalled 14,027. The official swearing in of the Ombudsman, which marked the official start of his work, did not take place till 30th October 1975, although complaints began in the summer well before Royal Assent to the Ombudsman Act in July 1975.

When a new institution is established there is, after the initial welcome, an underlying fear in many hearts, or at least in the more timorous among us. There is a feeling that its success may be conceded up to a point - and approved of. But supposing its success goes beyond that point? Then the timorous soul begins to feel insecure. What have we done? Has the Ombudsman taken too much on his shoulders? Weren't things happier before he undertook this mighty task of dealing with the grievances of eight million citizens? There is a standard criticism about most new foundations which is rooted in the feeling of insecurity of those who voice the criticism: "Too big and impersonal - it may overwhelm us all." Yet when we analyse the objection there is no reason why a large establishment should cease to be personal and inevitably become impersonal as it grows. The universities, the armed forces, the churches and even Parliament itself are all large but remain institutions where the individual counts.

From the outset of the Ombudsman's Office, a majority of the Legislature which originated the scheme has courageously supported its work. The government under Premier William Davis has also understood the crucial role which the Ombudsman must now play in resolving complaints by the citizen against the administration.

So far as private Members of Parliament are concerned, the Ombudsman's function is to increase the capacity of Members to help their constituents, not to diminish their importance as representatives of their constituents in Parliament. We have at

this point to ask ourselves why government is becoming so complex that the citizens of a parliamentary country need, in addition to parliament, an Ombudsman? Governments do not just start governing in a democratic system. Members have first to be elected by the people, and to attain a sufficient majority of representatives to support in parliament the particular government's proposals for legislation. So the complexities of government rest on the decisions of individual parliamentarians.

It is perhaps inevitable that Parliament - any Parliament - should look with some degree of doubt on a new institution; the keepers of coaching stables never felt happy about building railways across Canada and the owners of passenger steamers disliked the new idea of flying as a means of transport across the Atlantic. But the fact is that the Ombudsman principle has suddenly been recognized as an essential feature of modern government, both national and local. Almost in a matter of months, the movement has spread throughout the world. One explanation must be sought in the disappointment felt by constituents about the work of Parliament and the urgent need to support or even in certain cases to supplant it (I'm thinking about Hong Kong) with new and more alert methods of serving the needs of the people without the delays and frustrations inherent in the older method of political representation.

Another factor which has lead to the impending change is that of the educated electorate. When I first entered the office of Parliament, we still wrote with goose quills supplied by the government stationery office in bundles of a dozen. By and large the electorate was not educated and even one or two of the Members never learned to write. One of these was born in 1855 and retired in 1945 at the age of 90; he used to assist the Speaker in keeping order by blowing a football referee's whistle when uproar exceeded the normal level of noise. In the old days, the distinction between right and left was very strong - Conservative or Liberal versus Radical or Socialist. Today the battle lines are increasingly blurred. Taken over a generation, political programmes of all parties are roughly the same, i.e. to increase the wealth of the nation; to promote health, wellbeing and opportunities for its people; to reduce taxation and to abolish unemployment. The Communist Party Manifesto of 1964 has had virtually all its proposals implemented either by the British Socialist Government or by the British Conservative Government. The Manifesto contained what were then revolutionary but are now generally accepted ideas such as the ending by law of discrimination against women in employment. When the opportunity came for a Conservative Government to revoke the more extreme proposals such as nationalization of heavy industry and transport, they usually left matters as they found them.

An educated electorate will no longer believe, as their parents did, that devils comprise one party and angels the other.

They listen instead to the great constitutional exponents like Sir Ivor Jennings, who wrote: "All governments become intolerable to the citizens, sooner or later." The educated elector begins to ask himself: "Why should I put up with it? My vote decides through Parliament my future government, I know, but I want more than that. I want personal advice, personal concern and individual attention". This is where the Ombudsman enters as a significant answer to these half-expressed needs.

Parliaments have not entirely failed, but their work is suffering because they have tried to do too much. The three functions of parliament, as defined a century ago by Walter Bagehot, were first to legislate, second to vote public money after raising revenue by taxation and third to inform the public, keeping administration on its toes by scrutiny, criticism and inquiry.

This year we were presented with a new Bill entitled 'An Act for the Correction of Mistakes in Other Acts'. This seemed necessary when four lines were accidentally cut out in an Act agreed by both Houses. Fortunately commonsense re-asserted itself in time and after press and public criticism the Bill was dropped.

Every major Bill in Britain, once it becomes law, involves the employment of up to 20,000 additional civil servants - which explains why our public service - not counting the industrial ranks such as post office engineers - numbers 745,000 - outnumbering by some thousands the combined Army, Navy and Air Force.

If members of a Legislative Assembly concentrate their study on legislation and public finance, they would have time to retain or regain control in those fields, and leave criticism in the administrative field to the Ombudsman. In the year 1847 at Westminster there were 129 questions to Ministers on various aspects of administration; in the year 1975-76 there were more than 40,500. This is an immense burden both on Parliament and on government departments, involving huge amounts of time and paper, filing and printing, and thousands of staff.

The British Prime Minister was answering oral questions in the House. To brief him against supplementary questions which are made without notice, the civil service had to draft 64 possible answers, of which the Prime Minister was only able to make use of five.

Describing the supremacy of the Australian Parliament, the present Speaker of the House of Representatives praises Question Time when for about 45 minutes each day questions without notice are put to Ministers on matters relating to public affairs for which they are officially responsible. "Question Time," he declares, "is a most important expression of ministerial accountability." Which clearly demonstrates that the same complacent feeling about Parliament's capability exists among parliamentar-

ians throughout the Commonwealth and accounts for much of the current cynicism about parliamentary government.

Parliaments have sought relief by creating new departments of state which in turn have launched administrative satellites, under various names such as boards, corporations or government companies which have been set up with the blessing of the older parliamentary institutions. They are not wholly executive and yet not wholly judicial or wholly parliamentary either. There is a vast middle ground of organizations answerable to nobody in particular - uncertain of their role and capable in some case of little more than the residual capacity to draw salary - mushrooms under the feet of Members.

Let us take a recent example. The Office of Fair Trading in Britain was established under the Fair Trading Act, 1973, and is headed, not by a Minister but by a Director General. One of its branches concerns itself with the effects of commercial activities on consumers' interests and makes references to the Consumer Protection Advisory Committee. The second branch deals with codes of practice, liaison with trade associations and consumer complaints; a third branch conducts liaison with the news media and offers consumer information and advice. The only real function is to tell people to think twice before they spend their money. Does it need a Director General and elaborate machinery?

Justice, the British section of the International Commission of Jurists, claim that it was on their initiative in 1958 that studies began which lead to the passing in 1966 of the British Act for an officer to investigate complaints of maladministration against government departments. In a new report by Justice in 1977, this learned body has studied the growth of Ombudsman practice throughout the world. By the end of April of this year, 39 Ombudsmen are functioning at state level in the world today, 27 being from the Commonwealth countries.

In the United States, there are only four states which have an Ombudsman. There is no federal Ombudsman - complaints seem to be handled by the Washington Post. Hawaii in 1969, Nebraska in 1971, Iowa in 1972 and Alaska in 1975 created independent Ombudsmen - four out of fifty states. Elaborate checks and balances are written into the constitutions of the United States which make any innovation difficult. On the other hand, the need for Ombudsmen certainly exists. They have been set up by local authorities in Atlantic City (Georgia), in Dayton City (Ohio), Detroit City (Michigan), Jackson County (Missouri), Jamestown City (New York State), Wichita City (Kansas), Berkeley (California) and Anchorage (Alaska).

Justice has reached the conclusion that the wider the powers granted to the Ombudsman, as in New Zealand and Ontario, the more valuable his service to the public becomes. The British Parlia-

mentary Commissioner whom Justice describes as 'our fettered Ombudsman' is still restricted by the terms of the parent Act of 1966, which prevents him undertaking any investigative action unless first asked by a Member of Parliament to do so. A case arose, however, during the first year of his office - the Sachsenhausen case - which called in question all previous theories about his role and duties. The lessons to be drawn from it are still universally applicable and have not perhaps been universally absorbed. The first point is that any major investigation into the work of a government department must sooner or later involve the Minister responsible. It is not possible to indict a Ministry and exculpate a Minister except perhaps in minor and trivial instances, such as neglect by an individual to answer a letter promptly. The then British Ombudsman (Sir Edmund Compton) explained (in the context of the Sachsenhausen case) how the role of the Ombudsman was related to the doctrine of ministerial responsibility.

Conceding eventually that the Foreign Office would pay compensation to twelve claimants, the Foreign Secretary said they had decided to act on the Ombudsman's evidence against their own better judgment. The Ombudsman immediately challenged this concept as false. He had pointed out defects in the evidence on which the Foreign Office had acted in taking the original decision to pay nothing. "It is not my business", he said, "to substitute my decision for the Minister's. This would mean government by Ombudsman instead of government by government. What I have done in this and in other cases is to draw attention to what I think is maladministration and to ask the department to reconsider their decision; the next step is for the Foreign Office to review the evidence and take a fresh decision in each case."

The protest led on to a discussion of the role of the Ombudsman in relation to the doctrine of ministerial responsibility. In the first place the Ombudsman could report on maladministration by a government department collectively (which might include the Ministers) or on the part of officials, perhaps in submitting a misleading brief to Ministers, or on the part of one particular official, who might be named provided he has the chance to comment and defend himself.

Following an Ombudsman Report, the doctrine of ministerial responsibility could be involved in three ways:

First, there was the Minister's responsibility for action criticized by the Ombudsman. If the Minister disagreed with the criticism he would be endorsing the action and taking responsibility for it. That would amount to a conflict of judgement between the Ombudsman and the Minister which could be brought to the attention of parliament in a special report from the Ombudsman. The consequent steps would be left for Parliament to decide upon.

Second, the Minister might agree with the Ombudsman in a particular investigation, but the nature of the remedy would be the Minister's responsibility.

Third, where individuals within the department were criticized, the responsibility for putting right any administrative defects brought to light by a complainant's case was again the responsibility of the Minister.

The Ombudsman, if entrusted with the major burden, could sift and co-ordinate the raw material, obtain a collective response and press for collective action. In January of this year, the British Ombudsman reported that the total number of complaints received through Members of Parliament was 815. Five hundred of these he did not investigate because they were outside his terms of reference, which limit his inquiries into cases of maladministration by government departments other than the Cabinet Office or parliamentary staffs. Whenever complainants wrote to him direct, he was obliged under the governing Act to refer them to their Members. Of these complaints, 154 seemed prima facie valid, but only 52 of them which were referred to Members reached the Ombudsman. What happened to the other 100? They were never investigated by the Ombudsman, which makes a mockery of the current belief that the British Ombudsman offers, in our government's own words "an important protection for the citizen".

Of course, it would be unwise to assess the value of the Ombudsman from the number of complaints with which he has to deal. Given ample time and staff, the investigations of the London Ombudsman as disclosed in his report made admirable reading, giving in detail long and exhaustive inquiries and frequently ending with an abject apology by the government department concerned. The Ombudsman has called this the "Rolls Royce" method of investigating the working parts of the administrative machinery by scrutinizing them piece by piece.

There is no doubt that the shadow of the Ombudsman and his power to look over official shoulders at the official files on the public servant's desk is a salutary check on mismanagement or maladministration as our Act calls it. In Ontario and throughout Canada, the public are beginning to feel that the Ombudsman is on their side. By definition he is an independent officer, in most cases responsible to the legislature. He investigates citizens' complaints against departments and agencies of the government. This definition, accepted by the International Commission of Jurists, contains an initial contradiction in terms.

How can an official be independent if he is answerable to the legislature? The response to that question must be that the legislature should not seek to control his day to day work or the way in which he administers his office, and that the standards of bureaucratic practice may not be the most economical. Indeed they

have been shown over the years to involve the greatest extravagance in buildings and staff.

The legislature always has a general power of terminating the whole existence of the Office of Ombudsman by a statutory repeal of the original Act. If the legislature indulges in day to day examination of his work, it will compromise the independence without which an Ombudsman cannot fulfil the function for which he has been appointed. Between Parliament and the Ombudsman there must be a partnership in the sense that each institution is there to represent the people. Where ever the representatives falter, the Ombudsman must come in to assist their constituents and themselves.

There is a new element in the Ontario Ombudsman's Report to which I would like to draw attention. Many of the complaints were disposed of by the process of 'information and advice given', which in Europe is classified as 'Consumer Education'. Recently the European Economic Community asked the United Kingdom what it was doing in this field, and we had to search for an answer. Consumer education is needed to improve the quality of life and protect the environment for consumers. It is about how to live in an industrial society. Consumer education means asking questions about the political and industrial decisions made on our behalf by others. It means being sceptical about claims made for those decisions as well as claims made for products and services. It is an essential part of modern democracy which parliament itself has scarcely begun to recognize. In fact, consumer education, whose importance is now fully accepted by the E.E.C. is becoming a field for the Ombudsman. It is an immense new study which an independent Ombudsman's Office seems uniquely qualified to direct.

In addition to the statutory duty under s.12 of the Ontario Ombudsman Act to lay an annual report before the Assembly, the link between the Legislature and the Ombudsman was strengthened by the appointment of a Select Committee on Guidelines for the Ombudsman, under the chairmanship of Mr. Vernon Singer, a great campaigner for the establishment of an Ombudsman.

On 15th July 1976, a Select Committee was appointed to:

review from time to time the reports of the Ombudsman as they become available, to report thereon to the Legislature and to make such recommendations as the Committee deems appropriate; reports and recommendations of the Committee to be placed on the Order Paper for discussion after presentation.

This second Select Committee took over and embraced the duties of the Vernon Singer Committee. The Committee consisted of eight Members. By an interesting coincidence, the House of

Commons at Westminster has also appointed a Select Committee of eight Members to examine the reports of our Parliamentary Commissioner for Administration - the office holder we usually refer to as the Parliamentary Ombudsman.

At Westminster, I may observe in passing, the Select Committee this year criticized the new Ombudsman's appointment, implying that since he was an ex-civil servant, his inquiries might for that reason be less rigorous than if he were someone unconnected with the service of government. In the next sentence of the report, they added the confused conclusion that they did not cast any doubt upon the suitability of the newly-appointed Parliamentary Ombudsman.

The Commons' Select Committee decided that it was not their function to 're-try' cases reported on by the Ombudsman. Their role was to concern themselves with:

- (a) the remedy offered by a department to an aggrieved person;
- (b) the nature of any defect in the department's administrative system revealed by the Ombudsman's investigation;
- and (c) the adequacy of the Ombudsman's powers for the performance of his functions.

There is a need to re-assess the position of Members, now that one of their main functions in representing the interests of their constituents has been taken over by the independent Ombudsman. In England I have not hesitated to express myself officially on this question as I did to Lord Boyle's Committee on the remuneration of Members of Parliament. They should be paid more substantial salaries, perhaps double the present amount.

So far as Ontario is concerned, it is no secret that there has been public controversy on the role of the Select Committee on the Ombudsman and on the degree of independence which the Legislature has given him. For that reason I look forward to the discussion arranged for tomorrow afternoon on the Ombudsman and the Legislature.

Before that, we have two other important topics to discuss. The first, this afternoon, concerns 'The Ombudsman - the person or the function', and the second - tomorrow morning - deals with the Ombudsman's access to information.

It seems to me that all these three topics will be leading us in one direction, towards a consideration of the Ombudsman's permanent staff. For on their ability will depend the future continuance of the Office and on their integrity will depend the degree of access to information which the administration will be

willing to provide. So a principal question arises: Does Parliamentary control of the Ombudsman's work mean that he or they control his staff?

There is no doubt that an institution which does not have control of his own staff will not enjoy much authority or prestige. Earlier this year I was invited to look at the staffing of a provincial parliament in Canada. I approached my task under the assumption that its legislature was the most important institution in the Province.

My first evening was spent listening to laudatory speeches about the glories of parliamentary democracy, but I found later that the parliamentary staff, their salaries and therefore their prospects of advancement were controlled by the government of the day - very different from the freedom from government control enjoyed by the Clerk of your Legislature here in Ontario, or by the Clerk of the House of Commons in Ottawa or Westminster. It seems to me that the first essential for the work of the Ombudsman must be that his staff, chosen and appointed as they are by himself, must be independent of the legislature or government, and answerable to the Ombudsman alone. These young men and women hold the ladder which the Ombudsman must mount to peer over the defensive wall behind which the bureaucracy are carrying on their obscure activities. The Ombudsman himself must be able to rely absolutely on the loyalty, strength and integrity of those who hold the ladder. As time passes, these young and devoted people will amass between them a great amount of experience in the specialized work of the Ombudsman. They will become a body of officials with traditions of impartiality in serving the public, which will be different from that which exists elsewhere in the public service, who inevitably rely on Ministers for advancement.

In the distant future, on the retirement of the first Ombudsman, a successor will have to be found. This is where the question of person or function will arise in an acute form, and I think it would be wise to form a policy now, so that individuals can assess their own prospects and, possibly, we should endorse the policy with a resolution of this Conference.

To judge from precedents in England and elsewhere in Canada, there will at present be no continuity. The incoming successor will have no experience in the Ombudsman field. He will be a new boy in charge of those who hold the ladder which he will climb. They will not be so young as now, but they will have gained many years of specialized experience. They will, in the course of their investigative duties, have made powerful and influential enemies, and it seems important that their loyalty should be given its reward and that promotion should in due time be possible on the merits of their present performance. In other words, this brilliant and increasingly professional staff should be assured

that in due course they may be considered for promotion up to the top rank in the Ombudsman Office - that of Ombudsman himself. This is the system in all institutions of real strength. The days when a royal Duke of York was titular commander-in-chief of the Army and Wellington did the fighting for him are surely over in this modern Commonwealth. Doctors do not permit an untrained beginner to operate, nor do the judges allow unqualified laymen to succeed them on the Bench, and it would be unfair and injudicious to allow newcomers to supersede the staff of the Ombudsman's Office. I speak from experience. The first Clerk was formally appointed to serve the Commons at Westminster in 1363. I was the 38th Clerk to hold the appointment, but like my predecessors, I was appointed from within the Office of the Clerk. In this way we had a completely closed shop with total independence. That this system made for integrity is shown by the fact that unlike the Members we served, no Clerks have been penalized for misbehaviour in the past 600 years.

Other discussions this week will turn on the relations between the Ombudsman and the media. Here again the British section of the International Commission of Jurists have published some interesting recommendations which seem to endorse the work of the Ontario Ombudsman in his controversial field. Commenting on the British Ombudsman, they say:

The Parliamentary Commissioner could do very much more than he does at present in publicizing his activities and reports through giving press conferences and interviews on radio and television.....Other Ombudsmen, although they are all responsible to the legislature, consider themselves rightly as servants of the public and understand that the public must know about them and appreciate their role if they are to make good use of them.

I think the Justice Committee must have had Mr. Arthur Maloney's example before them when they concluded:

There is no reason why the Parliamentary Commissioner should not also take up this attitude and make himself as well known and as accessible as possible to the public.

On Canadian television this spring I saw the Ontario Ombudsman undergoing an intensive interrogation from a Select Committee on account of the scope, the initiative and the qualities of his staff whose united efforts under his leadership resulted in the remarkable report on the North Pickering Project involving the acquisition of land. I think he must have felt like the Pied Piper

of Hamelin when he asked the council for his fee for getting rid of the rats. There was no one else in that town of Hamelin who could achieve what the Pied Piper achieved. I have a fair idea that among Toronto's two million citizens only one particular Ombudsman that I see here this morning could have so successfully overturned those stones on the designated airfield as to lead to an agreement for a revision of cases and claims. The ultimate outcome of this exciting controversy is something all of us will watch with interest.

It is disappointing, however, when an Ombudsman upholds a just complaint but is without the power to enforce a remedy. In London this summer a complainant was involved in a lengthy and painstaking inquiry in which the Ombudsman's findings of mal-administration and his recommendations for redress were contemptuously brushed aside by the government department concerned. As the complainant himself observed:

The cost, futility and failure to get relief in such cases hardly encourages the aggrieved citizen, who suspects that Parliament largely set up the Ombudsman as a smoke-screen.

In some countries the Ombudsman movement may fall under the control of the bureaucracy and become discredited before it gets off the ground. The Commission for Local Administration in England provides an example of what I mean. It issues a splendid coloured advertisement for "Your Local Ombudsman", but scrutiny of the statutory provisions show that these so limit its operation as to deprive the complainant of any remedy. A paper Ombudsman is worse than none at all.

The 19th century was the great age of Parliament when for the first time speeches could be recorded in shorthand. Today, television has brought into every home first the politicians and then their analyst, the Ombudsman. For the first time the public can watch their champion questioning the power of Parliament and the ability of parliamentarians.

The individual elector has not, until the last decade or two, had the opportunity of judging his elected representative in relation to the events of the day. The T.V. interrogator puts the elected parliamentarian through his paces on all kinds of day to day topics, and the voter sits at home and judges the adequacy of a Member's response. It is a test which, in former times, politicians did not have to undergo. At home the viewer may well consider that his vote has been given too readily to the representative who is speaking on his behalf. His vote has been undervalued; some benefit for his loyalty should accrue which has not accrued. He begins to review his own dissatisfaction and personal inconvenience. Television is indeed a technical instrument for awakening discontent - both with consumer goods and parliamentary

representatives.

The significance of today's gathering is that its conclusions will stretch beyond the frontiers of Canada. We must cross national boundaries and not be afraid to expose the defects in our own country when we do so. One of the worst habits of statesmen is to condemn any criticism of their own country if uttered by its own citizens outside its boundaries. These politicians echo the old barbaric concept - "My country right or wrong", forgetting Dr. Johnson's retort: "Patriotism", he said, "is the last refuge of a scoundrel."

I would like to think that the little groups of British and French protesters who went to the New York inquiry to speak against their own governments by denouncing Concorde were taking a broader attitude than patriotism and exhibiting the kind of tenet that we look for in an Ombudsman.

The rule of law like freedom of speech is, or aims to be, international; justice does not stop at boundaries nor does injustice, and to counter it, the Ombudsman system is being set up in countries with no democratic parliament, such as Nigeria and Hong Kong. Already a map of the world will show increasingly large areas covered by the Ombudsman system.

I hope that before long a documentation centre may be established to record cases and issue uniform reports from each country, printed and indexed for reference. The Ombudsman ought to be more than a complaints officer. He should become a guide, counsellor and friend. Professor Richardson, the newly-appointed Ombudsman in Canberra, for example, wants to be "accessible to all Australians".

As Oscar Wilde wrote:

A map of the world that does not include Utopia is not worth even glancing at, for it leaves out the one country at which Humanity is always landing. And when Humanity lands there, it looks out and, seeing a better country, sets sail. Progress is the realisation of Utopias.

This concludes my short introductory address to you. I would like to say again I was tremendously privileged to be invited by the Ontario Ombudsman to come here and address you. I hope I've been sufficiently controversial at some points to be attacked vigorously, not physically of course, in this enlightened province, but attacked vigorously in debate. And I thank you all for listening.

ARTHUR MALONEY

Thank you very gratefully Sir Barnett Cocks. As a matter of fact, Sir Barnett Cocks was, as you will notice from the program, allotted sixty minutes in which to cover the subject matter and he has succeeded in accomplishing his objective in fifty minutes. On behalf of all of the audience I thank you for your excellent remarks. They were interesting, they were provocative. You said many things with which some people will agree. You said some things with which many people will disagree. But you have succeeded in generating a discussion on the subject that I hope will typify the next few days of our activity, a lot of interest in a subject in which there are many differing points of view.

I want to also join Roderick Lewis in extending a welcome to Lady Iris Cocks who is with you and to say how much we look forward to both of you participating as actively and as effectively as you can in the days that lie ahead.

Canada has contributed to international authorities on the Ombudsman function, one of its very own university professors. Donald Rowat, Professor of Political Science, of the Department of Political Science of Carleton University in Ottawa, has written much on the subject of Ombudsmanship. What he has said is to be found in many writings and books that have been a source of guidance to all of us who carry on the function of Ombudsman or who assist those of us who do.

Donald has accepted our invitation to lead off the discussion of the stimulating keynote address of Sir Barnett Cocks that we have just heard. Professor Rowat would you please come to the platform and address the audience.

At this stage of our conference, the platform guests are now asked to excuse themselves from the platform and we will go to our respective seats on the floor of the conference, and Donald you will be here all by yourself.

DISCUSSION OF KEYNOTE ADDRESS

PROFESSOR DONALD C. ROWAT
Department of Political Science
Carleton University, Ottawa

As you can see, ladies and gentlemen, I have been completely deserted on the stage here, and when there is a buzz running around the room it's always difficult to know exactly the right moment to start. It reminds me of the Master of Ceremonies who was to introduce a dinner speaker and he couldn't - the coffee

had not been served yet and he couldn't decide whether to introduce him before or after the coffee. And a buzz was still going around the room, so he leaned to the speaker and he said, would you like me to introduce you now or should I let them enjoy themselves a little longer.

Now Mr. Maloney has mentioned my own writings on this subject, as some of you know I launched into this career of Ombudsmanship many years ago. The first book that I edited on the subject is so old now that it is being remaindered at Coles book store and I understand you can buy a copy there for fifty cents. I hope you won't regard it the way in which the student regarded his Latin book. The Master was having a terrible time getting the student interested in Latin. He just couldn't seem to get him interested in the subject. But one day he noticed the student industriously inscribing something on the title page of the Latin book. So he thought, aha, at least I have this student interested in the subject. I wonder what he is writing and inscribing in the front of that book. He tiptoed up, looked over the student's shoulder and what he had just finished writing was: "in case of fire, please throw in this book". So I hope that won't be your attitude toward my first effort on this subject.

It is a great honour to be asked to lead off the discussion at this conference and to reply to Sir Barnett Cocks. It's a great privilege to be part of this conference. I had the good fortune to be able to attend the first conference of the Canadian Ombudsmen in 1972. Some of you will recall that that was called by the Commissioner of Official Languages. It met in Ottawa, and that was a kind of organizing conference.

The Canadian Conference of Ombudsmen, as you probably know, became the first organized meeting of Ombudsmen in the world. It was also responsible for initiating the International Conference of Ombudsmen which met last year in Edmonton for the first time and is planned to continue on a three year basis. It's interesting that the professor who wrote the essay on the application of the idea to the United States in the first book that I produced in 1965 predicted that it would not be too long before there would be an organization of Ombudsmen in the United States just as large as the International City Managers Association. And I was very amazed at this statement. I thought it was a very rash one to make and yet within the short period of ten years the institution has spread so far around the world that there now is an international organization of Ombudsmen. So in just over ten years, as Sir Barnett mentioned, there are something like forty what you might call genuine or classical Ombudsmen at the state and national levels in the world.

Now I foresee my role here as not to give you an uplifting speech or to congratulate the Canadian Ombudsmen on what a great

job they are doing, but rather to provide ideas, suggestions for discussion at the conference and for possible action. But I must try to leave some time for discussion. I see there is a discussion period after my talk so I will try to be brief. I'll try to adhere to the famous proverb of Confucius that he who speaketh by the yard and thinketh by the inch deserves to be kicketh by the foot. I've told that story before. I think I even told it at the 1972 Conference of Ombudsmen but since we're now transferring over rapidly to the metric system, I thought I'd better use it again. It may be the last time I'll get a chance to do so. I told that story at a Unesco conference in Paris and the translator had a terrible time with it because he not only had to translate it into French but somehow he had to translate it into the metric system, which proved to be an impossibility for him.

Now I hope that the discussions at the conference will be vigorous but I hope that they will not be too acrimonious and that as Sir Barnett says, he will not be attacked physically. I hope you will remember two other proverbs of Confucius. The first is that he who throweth dirt loseth ground; and the other one is - do not remove fly from friend's head with hatchet. So I've used up all my Confucius proverbs, so you won't have to worry about my inflicting any more on you.

Now let me make some comments on Sir Barnett's speech itself and then move on from there to pose some questions and problems which I think might be stimulating for your future discussion at the conference or at future conferences. Sir Barnett's knowledge of the parliamentary system as revealed by his speech is so profound that in commenting on it I may be a way beyond my depth. I may be like the farmer who was chairman of a local school board in a rural area and he was asked to give a convocation address. And so he was speaking to the children and he said isn't it wonderful that you children can come here and learn reading and writing and arithmetic and to learn that two plus two equals four, four plus four equals eight, eight plus eight equals sixteen, and sixteen plus sixteen equals ah - and then there is Geography.

It's a privilege to have someone with such a deep knowledge of the parliamentary system speaking to us because the Ombudsman institution is so intimately related to Parliament and to the Legislature. It was a most stimulating, thought provoking address with many interesting, memorable quotations. And I'm sure the Canadian Ombudsmen will be glad to hear that he prefers a direct approach by the citizens to the Ombudsman rather than the British system which as he says, results in the Rolls Royce system of investigation because there are so few complaints when the citizens are required to make their complaints through the Members of Parliament.

I thought it was a very good keynote address because it

focuses so much on the Canadian experience and on the real problems that the Canadian Ombudsmen face, and I think it will stimulate fruitful discussions in the six panels that are to ensue. And it no doubt sets a tone for a very high level of discussions at this conference.

It is natural that he stresses the problem of relations with the Legislature because of his long, long experience with Parliament, and it provides a very good lead into Topic Number Three on the Ombudsman and the Legislature. I thought that he picked on one of the key aspects of the Office of Ombudsman and one of the key problems when he stressed that a key to the success of the office is its independence from the Executive and, as he mentioned, even to a large extent, from the Legislature. It's interesting that the classical Ombudsman systems in Sweden, Finland, Denmark and Norway have stressed this aspect: that the Legislature and individual members must not interfere with the Ombudsman's investigations of individual cases.

And this is a key problem I think in the Parliamentary system of government because of the tendency for the government of the day to dominate the Legislature through its majority support in the Legislature. Now it's not quite so true of a minority government situation but of course the standard situation in most of the provinces and at the federal level is for the government to have a comfortable majority who toe the line to the government's proposals and suggestions. And it even happens that committees of Parliament tend to be dominated by the majority and therefore come under the influence, indirect if not direct, of the government of the day. So although it's clear that a Select Committee of the Legislature on the Ombudsman is a good thing, we must look at that relationship between the Ombudsman and the committee very carefully. And I would like to raise some additional questions for you.

One of them is whether the committee of the Legislature should not have as its chairman a member of the opposition, one of the opposition parties, just as in Great Britain. At the federal level in Canada, the Committee on Public Accounts, it is recognized should be chaired by a member of the opposition party to give it more independence from domination by government of the day.

Another aspect of independence that Sir Barnett notes is the very great need for an independent staff, that the Ombudsman should have control of his own staff and that the problems of staffing and the danger of domination by the government are also present there. And I certainly agree with that.

There are other aspects of this important theme of independence that ought to be discussed too, I feel. One other very

important aspect is the budget. I feel it is a really important key to the independence of the office. It deserves very full study and discussion either at this conference or, perhaps, it would make a suitable topic for a future panel at a future conference. You can think of various aspects of the budget which need to be discussed: how it is submitted, who approves it, who controls it when the money is being spent. Related aspects are the control of establishments, the control over salaries. Certainly you can't expect an Ombudsman to be completely independent with respect to the budget. It's a question of striking a delicate balance between the need for overall supervision and control and the need not to interfere in the day to day work of the Ombudsman. But certainly it's clear that the purse strings can control an office and that independence in this respect is extremely important.

The independence with respect to the setting, the fixing of the Ombudsman's own salary is extremely important. And some of you may have heard of the case in which an Ombudsman's salary was indirectly reduced by not being increased. In other words, comparable offices such as those of Deputy Ministers and others kept being increased with the inflationary spiral but his was kept as it was. And this was an indirect device for letting the Ombudsman know that the government did not favour his particular actions. So that there needs to be some sort of automatic tying in of the Ombudsman's salary which puts it in a position of not being subject to the influence of the government of the day.

Now a second aspect of independence that I think ought to be stressed is the method of appointing the Ombudsman. Of course there's a tradition of government appointment in the Parliamentary system. Almost all offices of government are appointed by the government. As Sir Barnett mentioned, he himself had been appointed by the Queen on the advice of the government. So it's hard to keep the government out of taking initiative in appointments of this kind.

I remember hearing an interesting story from W. R. T. Flemington when he talked to me just after he took office in New Brunswick. He said that the way in which he was appointed, at least his first knowledge of the appointment, was that Louis Robichaud phoned him up one day and said "How would you like to be our Ombudsman?". And W. R. T. Flemington's reply was "What's that?". So, certainly there can be a subtle or indirect, if not direct, influence by the government of the day on the appointment there is very likely to be in the Parliamentary system.

I think that a key to preserving the independence of the office is the insistence that there must be approval of the appointment by the opposition party or parties as the case may be. Also, that there must be tenure of the office beyond the life of a

Parliament. Thus the Ombudsman is not beholden to either the government or the particular Parliament in office.

I notice that in the proceedings of the International Conference last year, the French mediator argues for a non-renewable term. He suggests that if an Ombudsman can have his office renewed even though he has a fixed term, he is likely to be looking forward to that reappointment and this could be a subtle form of influence on his independence from the government.

I would conclude that part of my talk, then, by saying I hope there will be some discussion of whether any changes are needed in the method of appointing the Ombudsman at the provincial level in Canada, in the tenure of the office, and so on, in order to make sure that the independence of the Ombudsman is preserved.

A third aspect of this is the control of staff. The Ombudsman's control of his own staff certainly is another key to the independence of the office, as Sir Barnett has already pointed out. There are many aspects to this. Any controls that may exist with respect to the appointment, the promotion, the welfare benefits or the salaries of members of the Ombudsman's staff. It seems to me that an interesting topic for discussion is what controls, if any, should there be by the Treasury Board or the Management Committee of the government by the Public Service Commission of the province. This would make an interesting topic for discussion under Topic Number Five, the Ombudsman and the Civil Service. Or perhaps it could be a topic for a future panel at a conference of this kind.

Now other topics discussed by Sir Barnett were Topic Number Two on the Ombudsman and Access to Information. I would just like to make one or two points about that. I'm very glad that he dealt with this subject and that you're dealing with it at this conference because, as some of you may know, it's my present area of interest. I have moved on, or away, I don't know how you'd describe it, from single-minded concentration on the Ombudsman as a research subject. Now I am concentrating on the need for the right of the public to access to government documents in the administration.

I would like to mention that Mr. Baxilius, the Civil Ombudsman for Sweden has said more than once - he said it to me in conversation and also publicly on a number of occasions - that he feels that the right of access to government information that has existed in Sweden for so many years is far more important than the Ombudsman institution. That the Ombudsman institution where such a right does not exist, is a kind of

halfway house. The Ombudsman can act as a sort of agent for the citizen in getting at government information on his own case. The Ombudsman has the power to get at the documents, but I think we have to take the next step, that is, to give the citizen a direct power to get at documents in his own case and give him the right to government information and documents. Mr. Maloney mentioned this in his speech last year at the Canadian Regional Group of the International Ombudsman's Conference in Edmonton and I think it's a very important subject. I think this conference should consider the need for a freedom of information act and a privacy act at the provincial level in Canada. I think that it's a legitimate thing to do because it's closely related to the work of the Ombudsman. It's basically a procedural kind of matter, a matter of individual and human rights.

Now another topic that Sir Barnett dealt with was the Ombudsman and the media. And I'm very sorry that I will miss this session because I think it is a key topic to the success of the Ombudsman's office. He mentioned the need for more publicity, and particularly with respect to the British office, but I think it is a problem with most of the Ombudsman plans in the world. When I took a tour of the Scandinavian countries in 1973 to refresh my knowledge of the Ombudsman system, one of the main impressions I had in talking to the Ombudsman in Scandinavia was that they had a kind of fear of too much publicity to their office. The main fear they had was the fear of being overloaded. They were afraid that if they got too many cases, they too would become bureaucratic. There would be delays and slowdowns in their own work, and they would be accused of the very faults that they were criticizing the administration for. And so I don't think that any of the Ombudsmen have put forth a sufficient effort to make their office known. Karl Friedmann, who has studied the office in a number of jurisdictions has discovered this in his surveys of the public. He's here at this conference and he will no doubt have further to say about that. But he discovered that a very high proportion of the general population in the province - and I think this is true of all provinces - has never heard of the Ombudsman, don't know anything about it. And I think that argues for a much more vigorous method of publicizing the office, much more attention to how to make that office known.

One office that is in sharp contrast to the traditional methods of requiring complaints to be made in writing and not being vigorous about publicizing the office, is the office in Dayton, Ohio. This was almost a voluntary organization that was set up for Dayton and Montgomery County. The man who became Ombudsman there was a former newspaperman who is very conscious of the need for publicity and not afraid

of it at all.

He instituted two very interesting devices. One is that he wrote a weekly column in the newspaper, somewhat like the Action Line columns that you find in newspapers, except he was talking about actual cases that had come before him, and he did an even more startling thing. He acted like Canada's television Ombudsman, he dramatized cases over television, over the local television station. These were actual cases that had come before him and he, like Cooper of Canadian TV, would interview officials and extract promises from them to remedy the situation in the future.

Now that's a very interesting dramatic way of making the Ombudsman's functions known to the public. What you can say is that this man, Bingham, was not afraid of being overloaded and as a result the office began receiving something like 10,000 complaints and inquiries a year. And he simply plunged in and hired a volunteer staff to help him with this great load of complaints.

The conclusion to my story is a sad one, though. I hope it doesn't frighten the Ombudsmen too much. He died of a heart attack after he had been in office for about a year or two.

Now I'm wondering whether it wouldn't be wise to stretch the concept of Topic Number Four to The Ombudsman and the Public rather than the Ombudsman and the Media. Or perhaps it could become a topic for a future discussion. Certainly there are several aspects of this topic that involve the direct relationship between the public and the Ombudsman, such as I have just been explaining - and the need for making the office known.

Sir Barnett mentioned the need for the consumer education function. What is the Ombudsman's role in this? There are other aspects to the problem that need to be discussed - the problem of reaching the public is one that I've just mentioned. Should the office be decentralized more; should the use of the telephone be used more in making complaints; should there be provision for the Ombudsman's office writing down the complaint for the complainant in cases where people cannot write their own coherent story?

There is the general problem of reaching the poor, the uneducated, the deprived in society, I think, that is worthy of serious study. And I'm wondering whether, if the Ombudsmen have not already done so, they should not institute research studies of their own to find out to what extent their office is reaching the various groups in society and the various levels of those groups.

There is also the problem of the referral function or what you might call the traffic policeman function. In other words there are many inquiries that come to the Ombudsman's office which do not legitimately fall within his jurisdiction. And should the Ombudsmen expand their role in that respect, in other words, they're a traffic policemen directing inquiries elsewhere, even though they cannot handle them themselves. Now I do know the Ombudsmen do a great deal of this work already. In fact it's one of the very important functions of their office that is not revealed in the statistics on numbers of cases investigated. They do a great deal of good work in re-directing complaints where the complainant does get satisfaction even though they do not take on the complaint themselves. So there's this whole problem of inquiries that fall outside the Ombudsman's jurisdiction.

There is also the question of the role and function and nature of the annual report. That it seems to me could legitimately fall within the topic of the Ombudsman and the Media.

Have we now passed the stage when the cases should be written up in such great detail and at such great length? Should the Ombudsman try to make their annual report more interesting? Thus it will be read not only by the public and written up by the press, but also read more by the civil servants who need to be informed about the kind of precedent that the Ombudsman is creating in his decisions on individual cases.

I think you're all aware of the fact that Keith Spicer, the former Federal Language Commissioner, has earned a great deal of favourable review in the press because of the sprightly style with which he has presented his comments and recommendations. And Spicer at last year's International Ombudsmen's Conference wondered aloud whether the annual report of the Ombudsmen should not include more commentary, more recommendation, have more of a reform flavour than it has had up until now.

There is also a question of special reports. I notice that in last year's International Conference, Mr. Paquet, the mediator from France, argued that special reports gained far more publicity, and were far more useful in advertising the office. He therefore felt that the Ombudsmen should make far more use of their power to issue special reports on individual cases during the year rather than waiting until the end of the year.

So those are some comments on topics that Sir Barnett dealt with more fully. Some of the topics he did not deal with in any detail, and I would like to make a few comments on those.

Topic Number Five, for instance, The Ombudsman and the Civil Service, which will be dealt with on Thursday afternoon. Now it seems to me one of the key questions here is how formal should the relationship be between the Ombudsman and the senior officials or all officials for that matter. To what extent should he keep his distance? On the one hand, there is the great advantage and informality of speed, efficiency, getting things done faster by use of the telephone and so on. On the other hand, there is the danger of the Ombudsman, if he gets to know the senior officials too well and get too "pally" with them, being captured by their way of thinking and hedged in by their traditions and customs.

Another aspect of this is the whole question of complaints from the civil service itself; in other words, junior employees complaining about their own personnel matters in their dealings with senior officials.

Now another topic is the one for Friday morning, the Ombudsman as Investigator. Interesting questions here, it seems to me, concern the use of the initiative and the power to make inspections. It's interesting that this is one of the aspects of the office in Sweden that has been neglected, I think, because we've paid so much attention to Denmark and New Zealand as models. But if you look at the office in Sweden, you will find that one of the major functions of the Ombudsman is to take up cases on their own initiative and to make inspections - periodic inspections of government departments and agencies. The question is, should the Canadian Ombudsmen make more use of their power of initiative and inspection? Should they conduct what you might call efficiency surveys or touch on the sphere of organization and reorganization surveys arising out of the difficulties they see from certain cases that come before them.

So in other words should they go more for the reorganization and reform type of activity and function. Another interesting question in this respect is the investigative staff. What kind of staff make the best investigators? What sort of background should the Ombudsman look for in hiring investigative staff?

It's interesting that George McClellan, the first Ombudsman for Alberta, felt that former police officers seem to be eminently well qualified as investigators. I know he's spoken to me personally about this. I think he has mentioned it publicly a number of times that not anyone can make a good investigator of cases for the Ombudsman. It has to be somebody who is skilled at getting the facts, who doesn't waste time and who knows what he is doing.

Now I've reserved this topic for the end because I con-

sider it so important. And that is Topic Number One on the Ombudsman person or function that will be dealt with this afternoon, and I'm pleased that I will be here for this discussion because it will be interesting to see whether the aspect that I consider important will be dealt with to any great extent.

I think that one of the main issues here with respect to the Ombudsman and person or function is whether there should be a single Ombudsman or, what you may call multiple Ombudsmen or an Ombudsman Commission of some kind. I think this is an extremely important question for large countries, even large provinces.

Another question arising is whether the functions of the Ombudsmen in the provinces should be extended to the local level of government. In any large province such as Ontario or Quebec, the thought of extending his functions to the very large cities in those provinces, of course, is going to create a very serious problem for, what you might call, the personal element of the office. In other words, when the caseload gets to be a certain size, the talk about the Ombudsman giving the personal touch begins to look a little false.

Again the mediator from France mentioned that if complaints could be made direct to the Ombudsman in Britain and France, you could look forward to a caseload of something like 30 or 40,000 a year. He estimated that that might require a staff of 1,000 people to handle the number of complaints. So of course the fear is that the Ombudsman institution itself in a very large country will become a bureaucratic monster on its own. I think to argue that the personal touch is of any great importance in a very large jurisdiction is rather false.

So it seems to me that the alternative in a very large country is the alternative of multiple Ombudsmen, so that you still can have an Ombudsman dealing with cases and not a junior employee. I foresaw this problem at a very early stage and have consistently recommended some kind of commission for large countries, because it seems to me that it's the only way the office can operate effectively.

It's interesting that the mother of the Ombudsman institution, Sweden, switched to the multiple Ombudsman concept in 1968 although it had two even before that. It had one for military affairs. It finally decided that it should multiply the office in order to preserve as much as possible the personal touch. I hope that I may have had some influence in this respect because this change took place after I had had my conversations with Mr. Baxilius who was running into problems at that time and was very interested in the idea of a commission or multiple Ombudsmen.

It's interesting that the office has shifted again a bit with some experimentation because it was found that having four equal Ombudsmen did not coordinate the office enough. There was a change more recently in which there was a senior Ombudsman who supervised the other four as far as the administrative aspects of the job were concerned, although they still decided individual cases individually.

Other examples of the commission concept have existed for a long time in Tanzania where there's a commission of five; in Zambia where there's a commission of four. New Zealand last year switched over to the concept of three Ombudsmen. If you look at the recent developments you'll find that there seems to be a trend in the direction of the multiple Ombudsman concept. The new institution in Austria has a commission of three. Papua, New Guinea, has a commission of three. Nigeria, which may be a bad example, has a very large commission of twelve. And of course from the beginning the proposal in India was that there should be a multiple Ombudsman concept. That proposal lapsed for two or three years but with the new government it's been taken up again and I understand they're now introducing a revised Ombudsman bill in India which will include the multiple Ombudsman concept so it will be very interesting to see how the office works out in that country which of course, if it works there it can work anywhere, because of the problems of a developing country and the gigantic population of that country.

Now a related issue is the single purpose Ombudsman. In other words should we envisage or approve separate Ombudsmen for particular functions. That's become a very popular idea in the United States. We have our own example at the federal level in Canada, the investigator for corrections. It's popular for prisons in the United States, for hospitals, for school systems and so on. Is it desirable to have separate Ombudsmen for particular functions?

This proposal is coming up even in Norway. When I was talking to the Ombudsman just this summer he said that there have been proposals for separate Ombudsmen by function even in Norway. And he of course is opposed to it as I am because I think that it will create too much difference in the way that similar cases are decided. I think that there has to be a coordination of activity on the part of Ombudsmen especially if there are multiple ones which result in a uniform jurisprudence.

Now let me just conclude with some general questions for conference discussion or perhaps for action during the business session. The one question I would like to pose to you is whether there should be resolutions of this conference. Sir Barnett Cocks has already suggested that there might be

a resolution on one subject. I would like to raise that question in general. I think it has been the custom of these conferences not to pass resolutions but I'm wondering whether it would not be useful when all the time and money is spent to assemble all the experts on the subject whether such a conference should not pass resolutions. Especially on important issues such as the nature of the plan. It seems to me that's a legitimate subject on which a conference such as this could pass resolutions and in particular the subject of the independence of the Ombudsman which is the thing that we're all concerned with, in other words why not have resolutions on budgeting or on the relationship between the committee of the Legislature and the Ombudsman and so on.

I note that Mr. Maloney, last year in his address at the International Conference, talked about the implied powers of the Ombudsman. In other words his view was that there are powers to make proposals to the Legislature for the improvement of the office, and I see no reason why a conference such as this which can agree on some important principles should not make such recommendations.

Now it may be the conference will decide - my own view would be that of course a resolution of a whole conference on such important issues will give much more clout, much more influence on provincial Legislatures; but it may be the Ombudsmen, if they agree unanimously on a principle, would wish to proceed more quietly by making recommendations in their individual annual reports.

Now another question of this kind is on the spread of the Ombudsman institution. I would raise a question whether the provincial Ombudsmen have a responsibility to advocate the office in other jurisdictions where there is now a gap. And of course the obvious gap in Canada is the lack of an Ombudsman at the federal level. But as Sir Barnett Cocks mentioned, there is a responsibility for human rights throughout the world, and should we not proceed to urge the adoption of the Ombudsman institution in all democratic countries.

You will note the early influence of Professor Hurwitz in Denmark and Sir Guy Powles in New Zealand in promoting the adoption of the institution in other countries. They felt it was the responsibility of theirs to promote the spread of the institution in other democratic countries and devoted great efforts to doing so.

So my question is should the conference not do something by way of promoting the adoption of the institution in other democratic countries? Should it not even give a push to the federal government on the idea? After all it's not a question

of policy on the federal level, but of timing. Because when Otto Lang was Minister of Justice he promised an Ombudsman institution to us several years ago. I think the delay of the federal government is shameful. I think there's an urgent need for this institution at the federal level as has been revealed by the television Ombudsman program, many of whose cases deal with the federal level. And certainly it would take a load off the provincial Ombudsmen who have to deal now with complaints from the public against the federal government.

It seems to me that the federal government is getting farther and farther away rather than closer and closer. They're like Mr. Trudeau and Mr. Otto Lang when they went on a hunting trip, and they shot a moose, but the problem was the moose was several yards from the road and it was so heavy they couldn't move it to the car. They wanted to strap it on their car. Its horns were facing the road and they were tugging and hauling at it and having a terrible time because the horns would catch in the ground, it would gore them and so on. And then Mr. Arthur Maloney drove up on his Easy Rider motorcycle and said, "What's the trouble fellas, you seem to be having a bad time." And they said "Well we can't move this moose to the road. We keep tugging on its horns" and they explained their difficulties. And he looked at it, scratched his head and said "Well there's a very easy solution to that, all you have to do is pull it by the tail." So they thought that was very bright. They began hauling the moose by the tail and Otto Lang said to Pierre Elliot Trudeau, "Isn't that Arthur Maloney a very smart man to think of pulling it by the tail. It's ever so much easier to move this moose along now." And Pierre said, "Yeah, but how come we're getting farther and farther from the road."

So it seems to me that with respect to an Ombudsman at the federal level, certainly the government seems to be moving farther and farther from the road.

Now other ideas in this respect - I'm wondering whether the conference should not consider a resolution on the adoption of the Ombudsman at the local level. It's interesting that the United States is far ahead of us in the adoption of this institution at the local level. So far we don't have a single example of this in Canada, except for the extension of the powers of the Ombudsman at the provincial level to the municipalities. But that's something we need to discuss, I think, because in very large jurisdictions it's going to create a terrible problem for the provincial Ombudsman if his power is extended to the local level.

Should the conference recommend the spread of the institution to other countries - I've already mentioned that. It's

interesting that the spread of the institution has been slowed down at the state level in the United States. For a long time now there have only been four state governments that have this institution, and yet it seems to be operating very successfully in those jurisdictions.

Another possible idea for a resolution is something about the definition of the term Ombudsman. It's interesting that the term has been bastardized in a sense by being used by all kinds of executive Ombudsmen who have been appointed by their boss and are beholden to him and report to him. And it seem to me that perhaps a resolution at this conference which would restrict the term Ombudsman to genuine or classical or legislative Ombudsmen, as they have been called, might be a very useful thing to do.

So I conclude that I hope you'll take a very broad sweep on basic questions such as this. Now that the provincial offices are older, I hope you won't become too traditional in your ways of thinking, that you won't become too comfortable and smug about the office. You may now think that the Office is so well established and running so smoothly that nothing can go wrong. I hope you won't be like the automated jet, the first one of its kind in the world that took off from New York recently. This is a story told by W.T.R. Flemington, the first Ombudsman in New Brunswick. It was told before he became the Ombudsman for New Brunswick. I heard it in Ottawa when he was stationed there. So now the story is so old that it's probably new and maybe many of you have not heard of it.

Anyway, the American answer to the Concorde was to invent a completely automated jet which was to fly from New York to London in two and a half hours, completely pilotless, without hostesses, everything automated. So a Canadian reporter was invited down to attend this first great flight of the automated jet from New York. He got on the aircraft and it seemed very eerie to him. He looked in the pilot's cabin, there was nobody there, just a bunch of dials and so on. No hostesses to show him to his seat. He sat down wondering what to do next. And then a voice came over the public address system saying - ladies and gentlemen, and reporters, I'm happy to welcome you to the first completely automated jet flight from New York to London. Would you please straighten up your seat, fasten your seatbelts, extinguish your cigarettes and just relax because nothing can go wrong - go wrong - go wrong - go wrong.

So I hope the Ombudsmen will not be feeling so comfortable they will be like that automated jet. Thank you very much for your attention.

ARTHUR MALONEY

Thank you Professor Rowat for your contribution to our deliberations. The program calls for us to leave here sharp at 12:15 to go to the Hotel Torontonearby to be the luncheon guests of Paul Godfrey, the Chairman of Metropolitan Toronto and of his colleagues on Council. That gives us then fifteen minutes for audience participation and that participation can consist in the formulation of a question either to Sir Barnett or to Professor Rowat, or a statement of your own point of view, or a combination of both. Now bearing in mind that we have but fifteen minutes, I'd ask you to try to articulate your submissions as briefly as possible.

Professor Friedmann, I notice you're ready to either make a statement or to ask a question.

PROFESSOR FRIEDMANN

(first speaking away from microphone)

Getting the Ombudsman known among his audience or his potential clientele, the public, and Professor Rowat made reference to a survey that I had made earlier. I suppose I have stressed this subject often enough and I've also pointed out that the Ombudsmen are very conscious of this themselves. As I read the annual reports, almost all of them, almost every year, point out the need for more information efforts and so on.

But I'd like to just stress a couple of things. One is that the issue is a complex one. It's not that simple that you can say the Ombudsman is not well known, therefore let's get out and publicize it more. This is an over-simplified interpretation of the results that I found. There are several cross-cutting issues that have to be considered at the same time. One is the aspect of cost and staff. The minute the Ombudsman publicizes the office more there are going to be more complaints. And there may be more that are trivial, I don't know. One has to find out. And costs and staff have to be justified. There is also the problem of the bureaucratization of the office. If there is more staff the office can become more impersonal and can take on some of the diseases that we attribute to bureaucracy in general.

And last but not least is the problem of political repercussions as they are sometimes called. We always find M.P.P.'s, M.L.A.'s, M.P.'s, and so on, complaining about the great work load they have with thousands and thousands of complaints coming to them. But when you suggest to some of

them that they establish an Ombudsman to take some of that load off, they would really rather suffer or continue to suffer than part with their work load. And every time the Ombudsman goes out and advertises the availability of the office or makes himself available in every part of the province or country, there is some snickering among the political representatives. When Mr. Maloney went out to the four corners of Ontario, there were some cries about him drumming up business. In other words there was a suggestion here that he was raising complaints that don't really exist or wouldn't otherwise exist. So there's always the possibility of these political repercussions.

And when the choice comes down to advertising the availability of the office more, in order to get complaints out and the costs that are involved, namely alienating the political constituency, the choice isn't simple for the Ombudsman. But in the final analysis I think the over-riding value should be that the Ombudsman is there to deal with complaints that do exist. Then there is in the long run, I think, no excuse for not publicizing the office.

When I discussed this very question with the first Parliamentary Commissioner in Britain in 1967, some four or five months after he had been appointed, he said somewhat contemptuously, "I think that the general public are not my public, my public are the M.P.'s. They're the only ones who can bring complaints to me." I suggested, somewhat meekly, that maybe he could consider advertising the fact that citizens could take their complaints to their M.P. and the fact that M.P.'s have the recourse of going to the Ombudsman for impartial investigation. But that suggestion was dismissed rather offhandedly.

So there the attitude towards publicity was that our institution is a different one. We serve M.P.'s, we do not serve the citizen. I think this is a rather self-defeating attitude and I'm sure it hasn't taken hold in any Ombudsman office in Canada. But I agree with most of the Ombudsmen, and the annual reports that more publicity efforts have to be made.

ARTHUR MALONEY

Thank you very much Professor Friedmann. Sir Barnett have you a comment you would like to make about that?

SIR BARNETT COCKS

Thank you Mr. Chairman for giving me the opportunity of answering at least two points of Professor Friedmann's most interesting intervention. First on the cost - the cost of an Ombudsman who is able to ascertain the views of the public will be infinitely less than the cost of a bureaucracy which goes ahead without ascertaining the views and wishes of the public. I will give two brief examples.

The first one was a brilliant roads scheme in the middle of London. Those of you who know London would drive up north up Tottenham Court Road without interruption and those of you who also know, there's a crossroad called Houston Road, under which a bypass was built at a cost of millions of pounds. All bypasses, or underpasses, cost millions of pounds. The bureaucracy devised and built this brilliant underpass so that traffic would flow freely. Nobody measured the height of a bus. When the underpass was completed the ordinary citizens of London said, do you realize that the underpass isn't high enough to take a double-decker bus. As you know we have rather tall buses in London. Had there been an Ombudsman operative then, one of the complainants or one member of the public would have said to him - I hope they're going to allow for buses to go under the underpass. That would have saved millions and would have fully justified the expense involved in an office of Ombudsman capable of listening to the ordinary views of the public.

There are two other projects on this subject I might mention. Nobody ascertained the views of the public on an airplane called Concorde. It would have been desirable to listen to the ordinary commonsense Ombudsman client who might have said, by the way have you got permission to land if you build the plane. I think perhaps millions would have been saved if a simple citizen had gone to his Ombudsman and said, before you build the plane, do get permission for it to land. It can't stay up forever. That's another example where an Ombudsman exercising the right of the client to approach him and make points known, would have saved a great deal of money, far more than even the most expensive Ombudsman office or system.

The other point, the Ombudsman in England, which Professor Friedmann mentioned, saying that his clients were the members of Parliament, not the ordinary members of the public, I think I'm right in saying that the Select Committee of Members, eight members have told the Ombudsman that he must modify that view. They have recommended, as I said in my earlier address, they have recommended that the Ombudsman should go out and seek more publicity and make himself known by television

and so on to the ordinary man in the street. And that his attitude that he only served members of Parliament was not one which the Select Committee itself endorsed.

After answering those two brief points that Professor Friedmann made so interestingly, it would be ungracious of me if I didn't add my deep admiration of Professor Donald Rowat's exposition which we've just heard. He raised vital matters which in my ignorance I did not raise in my address. And I look forward very much in the week ahead to contributing items and I hope to hear Professor Rowat further. I couldn't help thinking when I listened to him how valuable it is to have a university outside view on these rather highbrow matters of officialdom, of Parliaments and of bureaucracies. Without the calm, dispassionate approach of the university professor in Ottawa, we would be very much poorer in our thought. And I for one am very deeply grateful to the professor for stepping in and pointing out some of the points I had already tried to make. Thank you Mr. Chairman.

ARTHUR MALONEY

Thank you Sir Barnett. George Maltby, the Ombudsman from Manitoba asks to be recognized.

GEORGE MALTBY
Ombudsman of Manitoba

Sir Barnett during his address touched upon the theme of the conference. "The Ombudsman Plan - an Extension of Democracy" which was followed by a question mark, and I'm very pleased that question mark is there because I'm dubious as to whether we can say that the Ombudsman Plan is an extension of democracy. He referred to a recommendation which had been made by the British Parliamentary Commissioner for Administration to a Minister of a Department and the special committee, I think he said something to the effect - reluctantly accepted the Ombudsman's recommendation. And this was followed by a comment to the effect that I believe the Minister himself said this would amount to government by the Ombudsman as opposed to government by the government.

Sir Barnett went on to say that democracy, the sovereign right, rests in the people through their elected representatives. They are the people who govern. The Ombudsman is neither elected nor does he govern. Therefore I think it is arguable that we can, and as I say I'm pleased it's followed by a question mark. It's arguable whether we could say that the Ombudsman idea is an extension of democracy. The Chairman only gave me two minutes so I'll say no more

on that point just now but I think it's a very interesting thing for future discussion as to whether or not we can claim it is an extension of democracy.

ARTHUR MALONEY

Sir Barnett, do you have a brief comment you'd like to make in response to that?

SIR BARNETT COCKS

Yes Mr. Chairman, if you give me time. I have I think, is it sixty-five seconds? I'm very grateful to Mr. Maltby. He knows my admiration of him personally through his magnificent war career and I would not descend in principle at least, from anything he said. But I think during the week, I would like a little bit to qualify the idea that the Ombudsman is quite remote from the democratic system. Democracy relies very much on the integrity of an independent officer such as the Controller and Auditor-General who as you know audits the government accounts. He is very much a part of the democratic system because we look to him to find and identify errors in the accounts of whichever government is in power. And I think also the constituents would welcome, as they do here, the opportunity to deal with an independent officer as well as dealing through their member of Parliament with the institution of Parliament. There's no reason why the constituent shouldn't have more than one weapon in his armoury of democratic practices.

Thank you, Mr. Maltby; we will talk further about your exploits in the Lancaster Bombers, built in Britain in the eastern counties and almost impossible to shoot down.

ARTHUR MALONEY

And that's even before there was an Ombudsman. Well we can pick up questions arising out of the interesting talks we heard this morning from Sir Barnett and Professor Rowat during future panels during the week. If we break up this present session now, it's 12:15. We're invited for luncheon at the Hotel Toronto, the second floor, the Governor General's Suite and the luncheon is scheduled to get under way at 12:30. We'll see you there and then we'll see you after lunch for our panel discussion this afternoon on The Ombudsman - the Person or the Function?

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 12, 1977

Afternoon Session

"THE OMBUDSMAN - THE PERSON OR THE FUNCTION?"

CONFERENCE IS BROUGHT TO ORDER

GILLES MORIN

Director of Rural, Agricultural
and Municipal Services
Ombudsman of Ontario

I'd like to welcome our delegates again to this Conference, and without further ado, I would like to declare the session open and introduce Dr. Frank.

PANEL CHAIRMAN

DR. BERNARD FRANK

Chairman, Ombudsman Committee
International Bar Association
Allentown, Pennsylvania

Thank you. There is one advantage and one disadvantage in being the first panel group in a week of panels. The advantage is that those of the panel who are nervous will by the end of the program be over their nervousness and enjoy the Conference after that. The disadvantage, however, is that because we are the first panel group, we will not be eligible for the award which will be given to the panelist who utters the first millionth word during this Conference. Perhaps during the course of this panel session, someone will explain that joke.

The subject that has been selected is The Ombudsman - The Person or the Function? and we have a format which briefly is as follows. We will have five speakers including myself talk about ten minutes each addressed to the question we hope, followed by audience participation and it is anticipated the program will end about 4:45. It is not necessary in introducing the various panelists to give a background since biography papers were distributed. Therefore, I will confine myself merely to the brief introduction of the person. The first panelist is Dr. Harry D. Smith who is the Nova Scotia Ombudsman. Dr. Smith.

PANELIST

DR. HARRY D. SMITH
Ombudsman of Nova Scotia

The legislative Ombudsman in each of the Canadian provinces that have Ombudsman legislation is the person appointed as an officer of the Legislative Assembly, for the purpose of fulfilling the functions primarily of being a mediator between the public and government bureaucracy, in the course of which he is on the alert for maladministration of the laws of the province, which, when perpetrated, could result in injustice, discomfort, frustration and dissatisfaction to the complainant.

So, when considering the Ombudsman, there is a person and there is a function. The function is to work within the Act set forth by Legislature, and the person is the one charged with the responsibility of carrying out that Act; but, I dare to say that the person is a more complex piece of machinery than is the Act. One may not be mechanically minded, and may not be a lawyer, yet may indeed be capable of fulfilling the function of discharging duties under the Ombudsman Act. I cannot help but insert that rather personal note, because that is part of the description of the Ombudsman for Nova Scotia.

The public, or, to speak more precisely, the complainant is primarily interested in having his or her problem resolved, and the alleged injustice removed. Complainants are generally content to have anybody from the Ombudsman's Office tackle the problem, although occasionally they insist that the boss, the Ombudsman himself (or herself) give his or her "prestigious" attention to the case. Although the Assistant to the Ombudsman and the Investigator are vital people in themselves, and indeed may be more skilled, more thorough, or painstaking in some ways than the Ombudsman himself, may I suggest that it is the Ombudsman who must give the thrust, the direction and the drive to the office that bears the title. It is he who is charged with the responsibility of performing a particular and an important function in the public interest. This audience, of course, knows that the Ombudsman is only as effective as the team that works with him. Notwithstanding that observation, however, do you not agree that it is the Ombudsman who imprints his or her personality upon the whole operation?...the receiving of the complaint, the screening, the investigation, the findings and the disposition of the complaint? I was interested this morning to hear Sir Barnett Cocks speak of the successor to the Ombudsman being drawn from within the Office itself. That is the first time that I heard that worthwhile suggestion made in public.

The set-up is much like the dozens of business enterprises, big or small, that you can bring immediately to mind. In all walks of life, in business, in the world of the academician, of schools and colleges, in hospitals, in the home, in the life of the homemaker and her family, in our churches and synagogues, in social organizations, whether the workers be paid or volunteer, there is a function to be performed and work to be done, and service to be rendered. And, somehow or other, those things will be done, and the services will be rendered; but how? With what degree of sincerity? With what measure of earnestness of purpose? I believe that the public is well served by people who are interested in their work, and who bring good humor and good sense to bear upon the problems that are encountered. I suggest, ladies and gentlemen, that although none of us is indispensable, we all have a limited tenure of office, which could be terminated by retirement, death or other factors. When one Ombudsman passes from the scene, another will take his or her place; but, things will not be the same - for this or any other office, be it in the home, in the schools, in the churches, hospitals and other places previously mentioned. The French expression says: *plus ça change, plus c'est la même chose*. My interpretation of that expression is that whilst the Ombudsman may change his position through retirement or death, the function of the office remains the same.

The role of the Ombudsman is a constant one, in that there is a continuing and constant need to protect the dignity of the individual, and the right to social and human justice for all. What I am trying to say is that whilst the function of the Ombudsman does not change, except by statutory amendments, the Ombudsman who is the leader in the carrying out of the function, does indeed change from time to time, through the processes of retirement, death or other.

Let us think for a moment of another part of the world, New Zealand, by way of illustrating my point. I hope that I am not diverging too much to have you draw your attention to Sir Guy Powles. For the past fifteen years has it not been the person, the personality, the warmth, the keenness of Sir Guy that has captured the imagination and made the office what it is, more so than the function of that same office?

We rejoice that Sir Guy Powles is alive and well, in the early years of his retirement at the age of 72; were he not physically active in his zestful and enthusiastic way, or, even if he had the majority, on the lengthening obituary list, I am strongly suggesting to you, ladies and gentlemen, that for some time to come, the Ombudsman in New Zealand will, primarily, be the person. The function will go on, as if self-propelled, and will, in time, be

given a new thrust, possibly another direction, certainly by a different personality that the public of New Zealand has known hitherto.

The old cliché which says that we cannot be all things to all people is true for the Ombudsman as well: yes, even the Ombudsman. In addressing my colleagues, I am aware that your successors and mine will be different to ourselves. This is inevitable, although it remains a continuing source of wonderment, that all God's children differ one from the other.

It could be an interesting, although probably futile, exercise to reflect upon the nature of the person who will one day succeed each of us. Remembering that the function of the Ombudsman is relatively constant, it is quite possible that those who succeed us may be equally, even more effective, than ourselves, by the ways in which they impose their nature, their character, their talents, "enfin, leur personnalité," upon the problems that beset the office whose function is one to be a mediator in the cause of justice.

Although it is anticipated that legislatures will continue to call upon people with some intelligence, common sense and sufficient measure of judgement to command the respect of their peers, it is possible that your successor and mine could be abrasive, rather nasty, ill-tempered, yet effective. I mean by "effective" that he or she gets the job done and the function fulfilled. You could ask in whose estimation is the person "effective"; is it the media that judges? Or is it the Ministers of the Crown? the complainants? those around us? even ourselves? Everybody with an interest is judging us all, n'est-ce-pas? We could leave that point to the discussion period which is to follow.

The important thing, in my view, is that the Ombudsman be true to himself, and to those with whom he works. By showing forth love and respect for those around him he will propel that feeling and concern for his fellow man to the public outside the office, who appreciate the human touch, who are grateful that a person, not a function, is endeavouring to help, and to be of guidance, through the frustrations and vicissitudes that affect our daily lives.

In conclusion, it seems to me that the function of the Ombudsman, in itself, is a relatively simple one. The complications arise when human people become involved in the performance of the function. Life in the raw can be beautiful and simple. It is the interplay among people that makes of life a many-faceted series of endless experiences. I should think that a person who has enjoyed some of those experiences

to the full, and who is grateful for life and its splendours, and who has a genuine regard for other people, may be worthy, in the eyes of his confrères, to become an Ombudsman, that is to say a person who is willing to mediate in a fair, just and humane way between government and those who are governed, as this is the function of his Office.

DR. BERNARD FRANK

Thank you Dr. Smith. The next panelist will be Dr. Luce Patenaude, Public Protector, Province of Quebec. I wish, however, to remind you that the English text of Dr. Patenaude's remarks have been distributed. But if you don't have a copy, do not go and get one at this time. Dr. Patenaude.

PANELIST

DR. LUCE PATENAUDE, Q.C.
Le Protecteur du Citoyen
Province of Quebec

"Les hommes passent, mais les institutions demeurent!"
entend-on parfois à peu de mots près.

Cet adage, dans sa sagesse, fournit réponse à la question "L'Ombudsman: le titulaire ou l'INSTITUTION?"

A mon avis l'ombudsman, pour les citoyens, c'est avant tout l'INSTITUTION et ils ne se référeront qu'exceptionnellement au titulaire; par exemple: lors de sa nomination, parce qu'une certaine publicité l'a mis en vedette ou sur la sellette, à cause d'un "accident de la nature", et le reste, et le reste. Il en va de même pour les citoyens québécois du moins. Ainsi, pour citer des cas: il arrive très souvent que des plaignants ont recours nommément à mes assistants en les gratifiant du titre de Protecteur du Citoyen (même la documentaliste eut droit à cette "euphorie"); plusieurs personnes continuent d'écrire à l'Honorable Juge Louis Marceau, mon prédécesseur en titre, qui démissionna pourtant en décembre 1975; à moi qui suis membre du Barreau on me demande de mettre au pas les avocats, "tous des voleurs", paraît-il; enfin maintes fois, au début de l'exercice de mon mandat, on usait de la formule magique "Vous qui êtes une femme!" (c'est là ce que j'appelle un accident de la nature ..) ce qui ne se produit plus maintenant et pourtant, croyez-moi, je suis toujours une femme.

On pourrait prétendre que la personne de l'ombudsman intéresse ceux des citoyens qui, lorsqu'ils se présentent à son bureau ou lui téléphonent, s'attendent à ce qu'il les reçoive lui-même. Mais ici encore cette exigence, selon moi n'a aucun lien avec la personnalité du titulaire mais, inconsciemment, s'attache plutôt au fait que l'ombudsman détient l'autorité et représente l'INSTITUTION. Ce que le plaignant veut n'est pas tant de voir l'ombudsman en chair et en os, mais de voir son cas étudié par lui. Il suffit alors de lui expliquer que l'absence de l'ombudsman ne lui fait perdre aucune chance de succès.

Ce n'est donc pas dans ses rapports directs avec les citoyens que la personne de l'ombudsman a de l'importance, mais plutôt dans le fonctionnement de l'INSTITUTION.

C'est à la personnalité du titulaire, à son jugement et à son doigté, puis à la politesse, à la diplomatie et à la patience qu'il exige de ses assistants que l'on doit la collaboration des membres de la fonction publique. Quant à son sens de l'organisation et à la philosophie qu'il a de son rôle, ils engendrent la confiance des députés et du public en général et l'efficacité de son service. Bref, le titulaire du poste d'ombudsman vaut à l'INSTITUTION sa projection et son image.

A cet égard, comment peut-on fixer, dans l'absolu, les dimensions idéales d'un bureau d'ombudsman, un mode d'opération uniforme, ou encore le chiffre exact des personnes qui doivent y oeuvrer? Le nombre annuel de plaintes ne constitue que l'un des facteurs déterminants qui entrent, en effet, en ligne de compte. Il faut également considérer la conception de l'INSTITUTION qu'a retenue le Législateur (s'agit-il d'une institution personnalisée à l'extrême, ou au contraire d'une autorité collégiale, ou encore d'un intermédiaire proprement dit du Parlement); il faut considérer aussi la compétence qui fut accordée à l'ombudsman (a-t-il le droit d'agir à l'égard de toutes les corporations de la Couronne, des municipalités, des fonctionnaires du secteur para-public tels les hôpitaux et les écoles); il faut considérer enfin les pouvoirs de délégation qui lui furent octroyés (lui faut-il intervenir nécessairement ou s'il peut le faire par l'entremise de ses assistants).

Ainsi, pour ma part, je favorise des effectifs minimaux mais sans, pour autant, sacrifier l'efficacité. Tout repose alors sur la répartition des tâches. La fonction de certains de mes assistants consiste essentiellement à assurer aux plaignants un accueil chaleureux et adéquat, ce

point est capital; quant aux autres ils s'occupent exclusivement des enquêtes; mon rôle consiste à exercer un contrôle suivi et très actif et à concevoir, étayer et rédiger des recommandations, pouvoir qu'il ne m'est pas légalement permis de déléguer. Toutefois qu'on ajoute à mon champ d'action ne serait-ce que l'Hydro-Québec, cette corporation de la Couronne qui s'occupe de la production et de la distribution de l'électricité, et je devrai faire augmenter mon personnel, décentraliser l'action de mes assistants et modifier la procédure interne actuelle de mon bureau.

En définitive, à la question "L'Ombudsman: le titulaire ou l'INSTITUTION?" il faut répondre le titulaire, mais dans le sens parodié de l'adage: "Les ombudsmen passent, mais l'INSTITUTION DEMEURE!"

Dans le temps déterminé qui m'était accordé voilà livrés, à l'état brut, quelques jalons de discussion. Je m'excuse d'avoir fait référence à ma courte expérience personnelle, mais dissenter sur l'ombudsman lorsque l'on occupe ce poste, c'est forcément analyser sa propre pratique.

("Men come and go but institutions remain." Every now and then we hear variations of this old saying.

In its wisdom, the old adage answers the question: "The Ombudsman ... the Person or the Function?"

In my opinion, the citizen views the Ombudsman, above all, as the INSTITUTION. It is only under exceptional circumstances that the citizen will refer to the person - for example, at the time of the Ombudsman's appointment because the attendant publicity had placed him in the limelight, through an "accident of nature", and so on and so on. This, at least is the case with the citizens of Quebec. To give a few examples: it frequently happens that complainants have recourse to my assistants by name and then flatter them with the title "Ombudsman" (even the librarian has been so honoured); several people continue to write to the Honourable Judge Louis Marceau, who held the position before me, even though he resigned in December of 1975; and, as a member of the Bar, I have been asked to keep lawyers in line, as it seems that they are "all thieves"; and on many occasions when I first assumed my duties, people were using the magic words "You're a woman!" (That is what I call an accident of nature ...). This doesn't happen much any more, even though I am still a woman, believe me.

One could argue that the Ombudsman as a person interests those citizens who expect to be greeted by the Ombudsman himself when they come to his office or call him. But here again, this expectation, to my mind, has nothing to do with the personality of the person holding the title, but rather, it relates unconsciously to the fact that the Ombudsman symbolises the authority and represents the INSTITUTION. What the complainant wants is not so much to see the Ombudsman in the flesh, but to see his case studied by him. So it suffices to explain to the complainant that his chances of succeeding are not all lost due to the Ombudsman's absence.

The importance of the Ombudsman as a person is not so much conveyed through his direct contacts with citizens, but rather through the functioning of the INSTITUTION.

It is the personality of the individual - his judgment and his tact, as well as the courtesy, diplomacy and patience he demands of his staff that is responsible for the co-operation given by members of the Civil Service. It is his organizational ability and his philosophy of his role that engender the trust of Members of the Legislature and the general public; and these qualities serve as well to ensure the efficiency of his service. In brief, the person gives his own particular stamp to the INSTITUTION.

In this light, how can we determine in absolute terms, the ideal size of the Ombudsman's office, or a uniform method of operating, or even the exact number of employees who should be working there? The number of complaints per year constitutes only one of the determining factors which actually come into play here. We must also consider what the Legislator had in mind for the INSTITUTION (an institution personalized to the extreme, or on the other hand a remote authority, or even an intermediary, properly speaking, of the Assembly); we must also consider the authority conferred on the Ombudsman (does he have the right to act with regard to crown corporations, municipalities, employees of the quasi-public sector such as hospitals and schools); and finally, we must consider the powers of delegation conferred on him (is it necessary for him to intervene in cases where this can be done through the intermediary of his assistants).

Thus, I personally favour a minimum of staff, but at the same time without a sacrifice in efficiency. Therefore, all depends on the delegation of responsibility. Some of my assistants' work is essentially to ensure that complainants are well and warmly received - an essential point; as for the others, they work exclusively on investigations. My role is to closely and actively supervise, and to plan, draw up and

present recommendations - a power which I am not legally authorized to delegate. Even if my jurisdiction were to be enlarged, to include, for instance, Hydro-Québec, which is a Crown corporation responsible for production and distribution of electricity, I would have to increase my staff, decentralize the work of my assistants and modify the present internal procedure of my office.

In the final analysis, to respond to the question "The Ombudsman ... the Person or the Function?", one must reply - the person, but in the parodied sense of the old saying: "Ombudsmen come and go but the INSTITUTION REMAINS".

In the time allotted to me, I have given a few very general points for discussion. I apologize for having made reference to my own short personal experience, but to expound on the Ombudsman when one occupies the position, is necessarily to analyse one's own experience.)

DR. BERNARD FRANK

Thank you, doctor. The next panelist is Alex B. Weir, Solicitor to the Ombudsman of Alberta.

PANELIST

ALEX B. WEIR
Solicitor to the
Ombudsman of Alberta

The question put to this panel is impossible to answer with scientific precision. Most complainants approaching an Ombudsman might find it difficult answering whether they approach the Ombudsman's Office because of the institution or because of the individual holding the position. Clearly it is a combination of the two. Nevertheless, I strongly believe that particularly in the difficult cases, complainants seek the help and advocacy of the individual holding the Office of Ombudsman.

No one can minimize the value of the solid foundation established during the early years of the Ombudsman institution. Sweden took the first initiative by appointing its first Ombudsman in 1809. For those of us in Canada, it seems as if New Zealand must have always had the Ombudsman institution forming part of its Parliamentary System. However, their first Ombudsman, Sir Guy Powles, has indicated that his

office was the fourth such office in the world and that took place in 1962.

The Ombudsman's Lamp of Scrutiny is very visible now, throughout the world. This was demonstrated during the First International Ombudsman Conference held in Edmonton, Alberta last year. Approximately 40 Ombudsmen from 18 different countries participated at the Conference. I firmly believe the primary reason for the phenomenal recent growth and interest in the Ombudsman institution is due to such outstanding Ombudsmen as Sir Guy. The credibility that he and others have achieved has convinced the public, and their elected representatives, to continue this world-wide expansion of the Ombudsman institution.

The question facing this panel can also be examined from the negative point of view. If an individual Ombudsman lost credibility within his particular jurisdiction, then, in that unlikely event, many potential complainants would deliberately refrain from referring their complaints to that particular Ombudsman. Other Ombudsmen would be adversely affected as well.

I have reached, what is, for me at least, the inescapable conclusion, that complainants really understanding the Ombudsman institution will approach such an office with difficult cases, only so long as they have personal confidence in the incumbent. It seems to me that the Ombudsman who supports a complainant becomes the complainant's advocate at that stage. For that reason, the complainant must have trust and confidence in his advocate--the Ombudsman.

Certainly the Ombudsman institution was never expected to solve all problems for all people. Within his jurisdictional authority, the ultimate that a complainant should expect of his Ombudsman is a convincing advocate, deserving his trust and confidence. Hence the reason why Ombudsmen and their staff gather at Conferences such as this in an effort to reassess their goals and improve their working efficiency.

In the future, we can look forward to the opportunity of participating in programs to be developed by the First International Ombudsman Institute to be located at the University of Alberta in Edmonton. Such developments will enable us to benefit from the proud Ombudsman heritage, especially the accomplishments of some of the outstanding Ombudsman leaders such as Sir Guy Powles, Dean of the Ombudsmen. As the performance of an individual Ombudsman improves with experience and enthusiasm, the institution of the Ombudsman is more generally accepted within the community as an effective means of remedying injustice caused by bureaucracy.

Last September during the First International Ombudsman Conference, The Honourable Mr. Justice C. W. Clement of the Alberta Supreme Court Appeal Division spoke of the independence of the Ombudsman. In doing so, he compared the role of the Ombudsman to that of the judiciary, and the struggles of the judiciary over the years in achieving its independence. Independence from the administration has certainly enhanced the effectiveness of the Ombudsman and has provided more opportunities for an individual Ombudsman to achieve excellence. Our host today, Arthur Maloney, spoke of the powers of the Ombudsman.

Sir Guy spoke at the Conference about jurisdiction, suggesting new potential areas for consideration. These subjects are provided for in legislation. Dr. Nebenzahl, Ombudsman and State Comptroller for Israel, spoke on the direct and indirect impact of the Ombudsman. This topic helps us answer this question about the Ombudsman--institution or person.

I believe the impact of any Ombudsman depends more on the ability and courage of the particular incumbent than on the powers or independence entrusted to him by his legislative overseers. In the final analysis, winning or losing an individual case will depend upon the Ombudsman's advocacy in convincing the administrators and ultimately, if necessary, his Legislative Assembly that a particular course of action should be taken. Ombudsmen are not super administrators, yet Ombudsmen must be super advocates to achieve better justice for the individual facing bureaucracy.

The eight Provincial Ombudsmen in Canada do not all have the same degree of independence in the sense that their security of tenure is not identical. Some are appointed for ten years, others for seven and five years, respectively. Their jurisdiction is not all identical and finally, their access to Government information is not absolutely identical. Furthermore, on the world scene the independence and authority of Ombudsmen varies. Nevertheless, the most essential ingredient of all, for an Ombudsman, in my opinion, namely advocacy, is something that cannot possibly be guaranteed within the Ombudsman legislation.

The annual reports of the Ombudsmen--both in Canada and elsewhere, emphasize that advocacy is periodically required to win some cases, especially if the administration under investigation disagrees with the Ombudsman. For the Canadian Ombudsmen, their respective Legislative Assemblies provide the final court of appeal--both with respect to the

ultimate merits of the particular complaint and all other major issues, such as the jurisdiction of the Ombudsman.

The public acceptance of the Ombudsman institution created by the achievements of those appointed as Ombudsmen has not only caused the spread of the Ombudsman institution itself but the appearance as well of many other complaint handling offices. Unfortunately, in some cases some offices advertised as Ombudsman offices have no real similarity to the real Ombudsman institution. Such misleading advertising has created confusion in the minds of the general public. As it is not illegal in Canada for such pretenders to appear on the scene, the real Ombudsmen are accordingly challenged to maintain a high profile, so that the general public becomes more accurately informed. The public becomes the ultimate beneficiary of the efforts striving for excellence.

In the final analysis, the primary goal should be providing positive help to persons who appear to have been subjected to an injustice. These positive results will speak for themselves, regardless of whether or not they are performed by a real Ombudsman, a pretender-like Ombudsman, or other effective complaint handling officials performing Ombudsman-like functions, such as the Russian Procurator.

The future of all of these institutions fighting for justice will definitely depend upon the effectiveness of the individuals appointed to assume such responsibility. Those of us appointed to assist an Ombudsman will hopefully provide positive help, not only to our respective leaders, but to the continued success and development of the Ombudsman institution. Clearly the Ombudsman must continue to have high goals, enthusiasm and work efficiency. The public will expect it of their Ombudsman--their advocate holding the Lamp of Scrutiny. Working in the shadow of an Ombudsman is both challenging and rewarding. Speaking of that reward - for me at least - it is simply being part of the Ombudsman's team. I sincerely hope there will never ever ever come the day where loyalty of staff, by itself, will be considered reason enough for an appointment as Ombudsman. Staff experience, by itself, does not provide that extra training in the most essential of all qualification - namely advocacy. The nationally recognized advocacy skill of Arthur Maloney - gained in the courts - and that of Randall Ivany gained in the Church has frequently resulted in headlines - Maloney Reports - Ivany Responds.

No designation on those types of advertisements that it was the Ombudsman Mr. Maloney or the Ombudsman Dr. Ivany. It is not necessary. I respectfully suggest that especially in the difficult cases, it is and it will continue to be the Ombudsman and not the institution. Finally, it must be remembered that it is only the Ombudsman who may make a recommendation and that's one of his powers that may never be delegated. The Legislative Assembly of Alberta has said so and to that I respond Thank Goodness.

DR. BERNARD FRANK

Thank you. The fourth panelist is Brian P. Goodman, Director of Investigations for the Ombudsman Office of Ontario. Mr. Goodman.

PANELIST

BRIAN P. GOODMAN
Director of Investigations
Ombudsman of Ontario

Dans son rapport annuel de 1976, Monsieur Joseph Bérubé, Ombudsman du Nouveau-Brunswick, constate que même si son poste avait été vacant pendant environ 10 mois, c'est-à-dire jusqu'en juin 1976, le nombre de plaintes a augmenté de 627 en 1974, à 1002 en 1975, et à 1048 en 1976. Malgré le fait que plusieurs citoyens avaient attendu sa nomination avant de présenter leurs griefs, environ 625 plaintes avaient été logées pendant la période où le poste a été vacant. A l'occasion de la 29e conférence de l'Institut d'administration publique du Canada, le professeur Karl Friedmann a prononcé un discours portant sur la perception et l'évaluation de l'ombudsman par les fonctionnaires de trois provinces. Dans son discours, le professeur Friedmann traite les résultats d'un questionnaire envoyé à des hauts fonctionnaires à Terre-Neuve, en Nouvelle-Ecosse et en Ontario. Il signale que les résultats diffèrent de très peu d'une province à l'autre. 70% des rapports venant de Terre-Neuve et 78% de l'Ontario ont indiqué que c'est très important de savoir quelle personne détient le poste d'ombudsman à un moment donné, mais en même temps les résultats statistiques indiquent aussi que le fait de connaître l'ombudsman personnellement n'influe pas sur l'opinion que l'institution de l'ombudsman est d'une importance capitale.

(In his report for the year 1976, Joseph E. Bérubé, the Ombudsman for the Province of New Brunswick, observes that, although the position of Ombudsman for that Province was vacant for almost ten consecutive months - up to June 1976, the number of complaints increased from 627 in 1974, to 1,002 in 1975 and to 1,048 in 1976. He comments that notwithstanding the fact that many citizens who lodged grievances with him indicated that they had been waiting for the appointment to be made, the fact remains that, during the period when there was no Ombudsman in office, approximately 625 grievances were lodged.

In a paper entitled "The Ombudsman and the Bureaucrat: Perceptions and Evaluations from three Provinces" prepared by Professor Karl Friedmann for presentation at the 29th annual conference of the Institute of Public Administration of Canada, Professor Friedmann considers the responses to his questionnaire which was administered to senior public servants in the provinces of Newfoundland, Nova Scotia and Ontario. He notes that there was little difference between the provinces: 70 (Newfoundland) to 78 (Ontario) per cent responded that it mattered very much who was the Ombudsman at any one time, and further that knowing the Ombudsman personally did not make a statistically significant difference in recognizing the incumbent as very important.)

During the next few minutes, I shall attempt to respond to the issue "The Ombudsman ... the Person or the Function?" from a chronological perspective; that is, I shall deal with the question from the time when the legislators recognize the need to provide for an Ombudsman to investigate administrative decisions and acts of officials of the government of the jurisdiction in question, through to the naming of the incumbent, and finally to the operation of the Office of Ombudsman itself, especially in a large jurisdiction such as Ontario.

While it is perhaps true that before any thought can be given to "the person", the government of the day must first decide to establish "the function" by Act of Legislature, once the decision has been made by the government to introduce an Ombudsman Act, immediate consideration is given to the question of the appointment itself. In fact, Bill 63, the Ombudsman Act for the Province of British Columbia which has now received third reading, provides that the Ombudsman is to be appointed by the Lieutenant Governor, on the recommendation of the Legislative Assembly, such recommendation not to be made unless a special committee of the Legislative Assembly has unanimously recommended to the Assembly that the person be appointed.

The Ontario Act simply provides that "the Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the Assembly". On March 11, 1975, Ontario's Speech from the Throne promised the appointment of an Ombudsman "as a safeguard against the growing complexity of government and its relationship with the individual citizen". Premier William Davis informed the Legislature on May 22, 1975, five days before the Bill received first reading, that "at such time as the necessary legislation is enacted, the government will propose for the consideration of this House the appointment of ... Mr. Arthur Maloney, Q.C., as Ontario's first Ombudsman". Significantly, the leaders of both opposition parties spoke not only in favour of the creation of the Office of Ombudsman, but in favour of the nominee as well.

It is perhaps self-evident that, whatever the appointment mechanism, the legislators must feel that the incumbent is a person who will enjoy the respect and confidence of the Members of the Assembly, (his "fellow-Ombudsmen"), the members of the Public Service, and the public at large.

The appointment having been made, it is, in my view, in the organization of the Office itself that the character, qualities, and perceptions of the person play such an important role.

First and foremost, I would suggest, the "person" is all-important in terms of the type of people he is able to attract himself to assist him in the performance of his functions under the Act. Second, although the jurisdictions conferred by the various provincial Acts upon the Ombudsman are more or less similar, there are an infinite number of differences in the organization and activities of the various offices, in large measure due to differing perceptions among the Ombudsmen themselves, as to their role and the nature and manner of services to be delivered. For instance, some Ombudsmen reject the concept of regular tours around the province to receive complaints as "knocking on doors" and "attempting to drum up business to justify one's existence". On the other hand, our Ombudsman willingly pleads guilty to this charge, and in defence suggests that publicizing the Office and making it available to those to whom Toronto is not realistically accessible is an important function to be served by the Office, and one in fact which was endorsed by many Members of the Legislature when the Act was debated.

Of course, I do recognize that such factors as the extent of the Ombudsman's jurisdiction, the size of the bureaucracy that he has been set up to survey, the number of complaints received, and the budget allotted to the Ombudsman by the Legislature, also play a part in the size of any Ombudsman's Office and the nature of services offered. Nevertheless, I am sure you will agree that the "person" is perhaps the most important determinant in the Ombudsman quotient.

I should like to address myself briefly to the question of an Ombudsman system for a large jurisdiction. There are those academics and observers who would contend that the Office should be a personal one, and accordingly that the Ombudsman Plan is inappropriate for a large jurisdiction, say for instance at the federal level. I, however, subscribe to the syllogism that: the greater the population, the larger the bureaucracy, the greater the likelihood of administrative unfairness, and accordingly the greater the need for an Ombudsman system. Obviously, the system must be designed to take into account and deal with such factors as the size of the jurisdiction and its public service, and accordingly the number of complaints which will be received.

In a large jurisdiction, it is unrealistic to expect the Ombudsman to personally interview every complainant, and investigate every grievance. This function is performed, as Madame Patenaude has observed, by the assistants to whom the Ombudsman has delegated certain of his powers. The Ombudsman, of course, performs a consultative and supervisory role and retains ultimate responsibility and control, since only he is permitted to make a report of the results of the investigation conducted.

Having worked at the Ontario office for more than two years, it is apparent to me that a large number of complaints, if not the majority, approach our office because of the "person" of our Ombudsman and the characteristics and expectations which the name Arthur Maloney evokes. Nevertheless, my experience has been the same as Madame Patenaude's, that the grievor is primarily interested in having his or her problem resolved and is accordingly just as happy to have one of the Ombudsman's assistants look into the problem. It is in this way that the office remains a personal one, with the Interviewer or Investigator meeting with and contacting the complainant on an ongoing basis.

Governments derive much kudos from the passing of an Ombudsman Act and the establishment of the Office. However, having given birth to the Office, there would, understandably, be a great temptation for governments to use, as an excuse for

curtailing the Ombudsman's budget, their view that the Ombudsman should meet with each complainant face to face and investigate each complaint personally. This view, I suggest, ignores the realities of a large jurisdiction and the fact that, despite the size of the jurisdiction, the Office can remain an intensely personal one through the instrument of the Ombudsman's assistants.

PANEL CHAIRMAN

DR. BERNARD FRANK

Two of the panelists spoke in English and two of the panelists - one partially spoke in French and I think I'll have to break the tie by speaking in Pennsylvanian. I must point out at the outset to this audience, if you have not previously observed, that I bring to this panel the viewpoint of an observer, a proponent if you will of the Ombudsman system. I am not an Ombudsman, I am not a member of an Ombudsman staff. I have never processed a complaint, I have never investigated a complaint, I've never written a recommendation. My approach you might say is academic and yet in a sense may be more objective than those of the other four participants. Those you have just heard have an approach which is based on Ombudsman office experience. However, having said this I must point out that the difference in these approaches between me and my colleagues here did not create any marked differences between those with whom I agree and my own remarks.

The question that is posed to this panel, and keep in mind that it is a question asked in the alternative - the Ombudsman - the Person or the Function?, means that a choice must be made. It does not read: The Ombudsman - the Person and the Function.

The question posed to this panel is one that is frequently asked. Several weeks ago I received the annual report of the Tanzanian Permanent Commission of Enquiry and mention is made of a meeting in Africa held in 1971 sponsored by the Economic Commission for Africa. The then Chairman of the Tanzanian Commission talked on the Tanzanian Commission. A majority of the delegates approved. However, the delegate from Senegal "expressed some fear as to the actual usefulness of the Commission" and one objection was that the success of the institution depended on the personality of one individual, hence its collapse at the disappearance of such a personality. The reply by Justice Kimicha of Tanzania was, "it is also untrue that the success of the Commission depended on one personality in power. This is because every person entrusted with such powers will be expected

by the masses, for his own good and theirs too, to strengthen the Commission and not to weaken it."

Before I can reply to the question I must define the Ombudsman "person" and the "Ombudsman function." In a recent article I said in discussing the principal elements of the concept that "the Ombudsman is generally a person of prestige and influence who must operate with the characteristics of independence, objectivity, competence, efficiency, and fairness." In the same article on the question, "why the Ombudsman" I said, "the Ombudsman provides the citizen with an expert and impartial agent who acts informally, without time delay, frequently without personal cost to the complainant, and without the requirement of counsel or an adversary proceeding, and determines whether the complainant has been wronged, and if not so informs him, and, if he was wronged, recommends corrective action. . . ."

And so, if I may repeat in a revised form, the main question, "which is more important--the person who holds the title of Ombudsman or the functions performed by the Ombudsman and his assistants?" I avoid the subquestion one might ask--"important to whom--citizen, civil servant, legislator, or media?" and view the question from the viewpoint of the public or citizen.

At Edmonton, the 1976 first International Ombudsman Conference, I heard a phrase which joined the few I have heard on the subject of the Ombudsman which caused me to rethink or review some of my Ombudsman concepts and views from time to time. Arthur Maloney said (if my memory does not fail me) that we devote too much concern to the question as to who is an Ombudsman and not enough to the question as to whether Ombudsman functions are being performed.

In my mental leap I come down on the side of those who give a priority to the functions performed by the Ombudsman and his assistants.

A complainant who is not provided with an Ombudsman Office performing these functions is a complainant for whom the Ombudsman concept is worthless. This is the main thrust of the Ombudsman system. The complainant wants action, without delay, without cost, without necessity of counsel, by an expert and impartial agent who acts informally, in determining whether the complainant has a just complaint and if so recommends corrective action. The complainant generally doesn't care whether it is the Ombudsman himself or his staff who perform these functions for the complainant.

This does not mean I am unconcerned about the individual who holds the position of Ombudsman. The person of the Ombudsman determines the direction of the Ombudsman Office and he imprints his own stamp on the office, its staff, and functions. The person may come and go but the institution will continue. At all times the Ombudsman must be a figure of prestige and influence based upon his independence, objectivity, competence, and fairness. The number of staff members, branch offices, outreach programs such as tours and telephone call service, accessibility, Ombudsman-initiated investigations, and the like depend on the statute involved, the extent of jurisdiction, geographical area, population, number of complaints received, the financial budget, and the personality of the Ombudsman.

Safaris may be required in Tanzania and outreach programs in Ontario but not in Jerusalem. Personal interviews with the Ombudsman may be had in Zurich or Haifa but not in Great Britain. The real question which must be answered is how best can the complaints of the aggrieved citizen be handled--and that depends on the functions of the Ombudsman Office as the first priority with the relationship of the Ombudsman person to the office and its functions as the next most important priority. A citizen deserves no less.

GILLES MORIN

Just a few notes, just a few changes to the program. The session will end at 4:30 and at that time Mr. Maloney has a motion to put before the House. So we can go on with the question period.

DR. BERNARD FRANK

We've had a brief breathing spell here, and we now are ready for the - I'm sure we'll get the questions, I don't know whether you'll get the answers however. Please ask for recognition and only one of course can speak at a time, and in the event of doubt, I'll do the talking. First question?

JOSEPH E. BERUBE
Ombudsman of New Brunswick

I'd like to direct a question to Dr. Frank.

PANEL CHAIRMAN

DR. BERNARD FRANK

That was not the purpose of this panel.

JOSEPH BERUBE

Dr. Frank, shortly before my appointment last June, 1976, the press was speculating it had taken over eleven months to choose a successor to my predecessor and the press was speculating at that time that the government was looking for a person that was non-political, a Francophone - because in New Brunswick both French and English are official languages, and also the press was speculating that the government was looking for a lawyer. As you know, in New Brunswick all but the first Ombudsman were lawyers and in Quebec the two Ombudsmen were lawyers. A few years ago the International Bar Ombudsman Committee, I think, adopted an Ombudsman definition. I wonder if you could tell us if the International Bar Association which seems to be more concerned with the Ombudsman concept than our own association, the Canadian Bar Association - if that association has ever advanced the view that Ombudsmen should be lawyers, taking for granted the fact that laws now may be short but may be followed by pages and pages of regulations.

PANEL CHAIRMAN

DR. BERNARD FRANK

No, neither the American Bar Association which you did mention - which also has a very elaborate definition - or the International Bar Association requires in their definition or to any other policy declaration that an Ombudsman be a lawyer or a judge because it's recognized that in given jurisdictions, an Ombudsman who is not a lawyer can serve as well, perhaps even better. Now if you don't feel that's an answer, come back again.

This subject, it seems to me, is limited because of the alternative 'or'. Perhaps it might not have been as limited if it said 'and'. So if you wish to use the opportunity to speak on any subject close to what we're talking about, do so. Use the opportunity to speak up.

ARTHUR MALONEY

Can I just stick to the subject for a minute?

PANEL CHAIRMAN

DR. BERNARD FRANK

Yes, it's intended that we speak to the subject, but if there are not enough questions on it then we can talk generally on the Ombudsman. Mr. Maloney.

ARTHUR MALONEY

What I would like is to canvass the opinion of any of you on the panel who is prepared to address himself to the point that was touched on by Mr. Brian Goodman to a greater degree I think perhaps than by the others of you who dealt with other aspects of the general subject. That includes you, Mr. Chairman, I'd like your views too - your opinion as to the relevance and the applicability of the Ombudsman concept as we know it traditionally, to a jurisdiction the size, for example, of Canada as a whole, Australia as a whole, the state of New York, the state of Michigan, the state of California.

PANEL CHAIRMAN

DR. BERNARD FRANK

We'll let the right first have an opportunity to answer this. I think Brian pretty well expressed his view.

PANELIST

BRIAN GOODMAN

I touched on it briefly. Perhaps there is one point that I'd like to make. I find myself in some disagreement with Professor Rowat who suggests that at the federal level there be a commission. Now I think that there is a need, as I indicated in my remarks, for an Ombudsman system at the federal level. The question of how it works depends upon as I said, the size of the jurisdictional question. But it seems to me that having viewed the Swedish experience as an observer with the multiple Ombudsman system, that an Ombudsman

system at the federal level should have one Ombudsman and a number of deputy Ombudsmen who have certain areas of responsibility. For instance, one could be responsible for investigating complaints against the national police force; one in charge of investigating complaints from the military; one in charge of investigating complaints let's say against the Unemployment Insurance Commission, which of course generates a large number of complaints; and a large number of complaints to provincial offices from people who don't know the limits of the Ombudsman's jurisdiction. But in order to retain ultimate control and direction and supervision, it seems to me there should be just one Ombudsman with a number of deputies in given areas.

PANEL CHAIRMAN

DR. BERNARD FRANK

Left - if you wish to answer.

PANELIST

ALEX WEIR

I'm just wondering, Brian Goodman, when you say that there should be one Ombudsman and a number of deputies, I would suggest that what you're saying may be close to what Professor Rowat has said years ago if I recall what he was saying correctly when he was suggesting a commission of Ombudsmen, he was suggesting that they would basically work within one given office. Each individual deputy Ombudsman, as it were, would be supreme within his own area and as Chief Ombudsman Lundvik has indicated, he only gets into the picture basically to help, not direct, but help guide his colleague Ombudsmen in making sure there is some uniform degree of jurisprudence so that one isn't going in one direction and one isn't going in another. So that so long as an Ombudsman is capable of basically controlling what the action is within his Office, then you have this personal action, this personal confidence that complainants can have and with respect to what you said earlier, Mr. Goodman, I challenge you on one statement where if I recall what you were saying correctly, it was almost as if it didn't matter really if there was an Ombudsman, the same complaints would continue to roll in. And I respectfully take the opposite opinion and disagree with you violently on this. I think the public does indeed

care very much who their Ombudsman is. Furthermore, that the public cares very much that their Ombudsman is personally involved in their case recognizing that the Ombudsman can't do it all on the individual case, but that it is their Ombudsman who says - yes by golly, I'm going to undertake this investigation, and at the very end of the investigation, it's their Ombudsman who is going to say, yes or no, with respect to the merits or otherwise of the particular complaint. Thank you Mr. Chairman.

PANEL CHAIRMAN

DR. BERNARD FRANK

As I understood your question, Mr. Maloney, the first question was an expression of views as to the Ombudsman concept in large population areas. Is that the first -

ARTHUR MALONEY

I want your view as to the applicability of the traditional Ombudsman concept to a huge jurisdiction.

PANEL CHAIRMAN

DR. BERNARD FRANK

I have never subscribed to the view and I don't know whether it came from Professor Gellhorn or Professor Rowat - since he's the only one here, we'll toss most of it on to him - that the Ombudsman system can flourish only in small countries or with homogeneous population and with a good civil service. I have never subscribed to that view and always felt that the Ombudsman could apply in any jurisdiction. Now having said that I have also always believed that the Ombudsman concept could be applied to a large jurisdiction. But when we're talking about large jurisdictions, we're not talking about Toronto which is large with several million or New York City with eight million or whatever it is, we're talking about countries such as Great Britain, France, where they have systems but with a price and that is siphoning complaints through members of Parliament. We're also talking about India where I notice last month the new government introduced legislation on a federal level. We're talking about countries with millions and millions of people, and it seems to me that the

concept can be tailored which is one of the beauties of the Ombudsman system, it can be tailored to that particular country. If it needs a multi Ombudsman as in Sweden, and that's a relatively small country, or as Professor Rowat suggests, if it needs a commission, or if a single Ombudsman can be utilized, so far as I'm concerned that's really only a detail, but a very important detail because budget becomes an important factor.

So I see no reason why the Ombudsman system can't work in India and why it cannot work as I think it has worked with limitations in Great Britain and in France. I see no reason why it could not work in the United States on a federal level. Let me say this, having previously said that I think any type of system could be used, I have a particular viewpoint against a commission. If you're using multi Ombudsmen as in Sweden, you'll find that there the Ombudsmen act within a given area of government and they don't act as a board or as a collegial body. In Tanzania, they do. There are three people on that commission, well it's now five. And I've often wondered what would happen if I were a public servant and the commission voted three to two telling me to do so because it seemed to me with that type of system the public agency would go to the minority viewpoint and say, well two of the five agreed with us, three didn't. But the Swedish system, it seems to me, could work. If Professor Rowat is talking about a commission where all of the members have equal powers and it requires a majority vote like an appellate court, then that I don't think will function. But multi Ombudsmen will function.

Any more questions? Professor Friedmann.

PROFESSOR FRIEDMANN

On the question of whether it's the institution or the function that is important, I think we may have an interesting experience here in Canada. We've had three offices which have had an Acting Ombudsman, or in fact, in one case, just an office carrying on without anyone being specifically appointed as Acting Ombudsman. And I'd like to address, in fact, a question to them rather than the panel, to tell us from their experience, how did they carry on with no Ombudsman present. Did the civil service stop to accept their recommendations? Did they refuse to give them documents? From the answers I got to the question when I asked it, it appears to me that the Office, at least for some time, can carry on very well, thank you, so to speak. And it seems that this experience really points to my conclusion that it's a question of both/and -

it's the person and the office. Of course the acting Ombudsman may be important but it seemed to me that the experience in these cases which lasted in two cases at least, over twelve months, point to the fact that there is the Office which is of considerable importance and it can be carried on by someone other than the Ombudsman.

PANEL CHAIRMAN

DR. BERNARD FRANK

Professor Rowat?

PROFESSOR ROWAT

Can you all hear me from here?

ARTHUR MALONEY

It's a question of our recording system. If you don't mind going to the microphone.

PROFESSOR ROWAT

I hope you'll forgive me for speaking again, but since my name is taken in vain several times, I think I should reply. And also I will only be at this conference tomorrow and unfortunately will not be present during the rest of the week. So I hope you'll bear with me speaking more frequently during the first two days.

I wanted to make three points. One is the argument about the nature of the collegial commission. I think what is not clear is that what I have been advocating is a kind of compromise between what all three of the speakers have been talking about, that is a commission which is a collegial body. It has a chairman who is the chief commissioner and who fulfills the function of co-ordination and leadership and so on, that Brian Goodman has been talking about. But the other members of the commission would be specialists in fields of activity and would have the power to make final determinations. I think that's the important difference between what I am proposing and what Brian Goodman is proposing. In other words citizens will feel that they've got a kind of second class decision if one of the deputy

Ombudsmen made the decision for them, whereas what I'm proposing is that the members of the commission do have the power to make final determinations. On the other hand -

PANELIST

ALEX WEIR

--Is that not the way the system exists in Sweden where the chief Ombudsman really only comes into play where if there is such a variance of opinion as to which specialist Ombudsman should handle the case, then he decides which one will take the case?

PROFESSOR ROWAT

That's true, except that I'm proposing that the commission would move a little more in the direction of a collegial commission. In other words that on really important cases they would meet together and make a decision and there are of course some cases that are much more important than others. And on those cases you would run into the problem that Bernard Frank is talking about. In other words, you may have the danger of a majority decision. But it would be only on those cases. With minor cases, the final decision would be made by the specialist Ombudsman in his own area.

Now there is another point that I would like to make and that is - well there are two other points. One is I would like very heartily to agree with Bernard Frank's point that the function of the office is extremely important and probably has priority from this point of view. A good deal of discussion in the International Bar Association Committee, the American Bar Association and elsewhere has gone on, about what is to be defined as a proper or classical Ombudsman office. And there the function of the office and its nature is of crucial importance. There are persons in the United States, heads of departments and so on who have said "I am an Ombudsman", and they're purely executive Ombudsmen. They have no independence from the administration and one could well argue that it depends on the personality of the person, whether he is willing to be fair and just and so on. But I would argue that he's in an impossible position to be fair from the citizen's point of view. The office itself has to be absolutely independent and it has to be independent from the citizens. From that point of view, I would argue that the function, the nature of the office, is

far more important than the person fulfilling the role of Ombudsman. I would qualify that, however, by making a point that has not been mentioned yet, and that is, it's characteristic of institutions in general that the first person who holds office as the head of a new institution is extremely important in setting the precedents, the ways of doing things and the nature of the Office for future time. Once the pattern has been set, it's extremely difficult to change. And therefore that's why I'm qualifying my statement to say that the very first person who's appointed to the new Office of Ombudsman in a state or a nation is of crucial importance to the nature of that Office because he determines the pattern for the future. From then on I don't think it matters as much who fulfills the Office because the tradition and the pattern have already been set.

PANEL CHAIRMAN

DR. BERNARD FRANK

Thank you Professor Rowat. Are there any - George Maltby.

GEORGE MALTBY

Just taking up the point that Professor Karl Friedmann made which was well taken - we have two examples in Canada where the position was vacant for approximately one year - New Brunswick and Saskatchewan. And I think those two examples prove the point, that the function is more important than the person. In the case of New Brunswick, Mr. Ferris did not only have the stamp of one previous Ombudsman, I think there had been three in New Brunswick before Mr. Bérubé took office. I agree with what Professor Rowat says that the first incumbent kind of sets his stamp, but it doesn't necessarily have to be followed by subsequent appointments. In the case of Saskatchewan, Mr. Barker kept the function going for a full year. No doubt he had private consultation with the former Ombudsman who is now a judge, but there's credit due to Mr. Barker for holding the Office. I think these two examples prove the point that the scales come down on the function being more important than the person.

PANELIST

ALEX WEIR

Quite frankly I'm shocked when an academic of the qualifications of Professor Rowat would at least lead me to believe that it doesn't matter what the heck the successor does. The theme is established and then by gosh we're set with the theme forever and ever. Although maybe I misunderstood him and with my deep respect for him I trust I have. But I feel very strongly that it is the Ombudsman, the person, who sets the theme for the office. In Alberta, I think you will find very few, if any people, including the media, who will suggest for a moment that George McClellan is identical in his style with that of the present Ombudsman Randall Ivany. There's a different style, and I think that's refreshing and in fact - as wonderful an Ombudsman as all of us in Alberta, and particularly the Alberta Office feel, that George McClellan was laying a fantastic foundation in Alberta for an Ombudsman and for the Office, there was a fresh new breeze and new directions and that is exactly what the Select Committee in selecting Randall Ivany indicated they were looking for. And I would certainly hope they were not expecting for a moment that Randall Ivany with his specialized and great background in working as Ombudsman would be another George McClellan. And the same with any Ombudsman who is a successor to an Ombudsman without the same background. But perhaps I have misunderstood Professor Rowat and hope I haven't come on too strong to offend him.

But I think it is the Ombudsman, the person, and again if I may go back to the negative aspect of it, if what Mr. Maltby says is correct then one would almost tend to believe that once a great Ombudsman has set a pattern, it doesn't really matter whether you appoint a successor. The pattern has been set, the Ombudsman Office would just carry on like the computer. Surely to goodness this will never be. It will still be the Ombudsman, the person, helping the complainant, the person.

GEORGE MALTBY

I'm not saying we can do without a person as an Ombudsman I'm merely saying that the question is which is the more important, the person or the function?

DR. BERNARD FRANK

I want to say I agree with Professor Rowat, not only because he agreed with me on something. But I did not

understand him to say, or I didn't interpret what he said as meaning that once you have your first holder of the office, that from then on it rides like perhaps the Toronto subway, in a straight line. But what I understand Professor Rowat to say and it would conform to my own thinking, is that it is very important in setting up the Office for the first time that you have an incumbent who is - I was going to use the word damn, but I decided not to - good, and who can set the pattern. But that doesn't prevent subsequent changes which you know will occur with successors.

Let me point out that the Mauritius Office went down the drain initially because a Swedish judge was appointed as an Ombudsman and for some reason the government issued a White Paper in defence of its position - for some reason the office didn't function and he didn't function. Finally he was either removed or resigned - I'm not quite sure which - then people within Mauritius were appointed. The late Muto Sami was appointed. So there's an illustration. If the right man had been selected for the Mauritius Office initially, it would have created a pattern and the fact that there are successors doesn't mean that the successor must follow what the initial incumbent did.

I think you come on too strongly with Professor Rowat on that.

PANELIST

ALEX WEIR

Perhaps, hopefully, it will just be to provoke discussion.

PANEL CHAIRMAN

DR. BERNARD FRANK

Frank Flavin will come out of his ice tundra.

FRANK FLAVIN Ombudsman, Alaska

Frank Flavin from Alaska. I appreciate the privilege of the floor. One question I have which might help with the main question is a subsidiary question to answer whether or not the Ombudsman or the institution is the most important.

The judicial system has survived a lot of bad judges. Can the Ombudsman institution survive a bad Ombudsman?

PANEL CHAIRMAN

DR. BERNARD FRANK

Next Question? (laughter). Well we haven't had that experience yet.

GEORGES TSAI

Representing Commissioner of Official Languages

Mr. Chairman, I wonder to what extent the question asked in the theme of our session is not what we call in French, or at least to a certain extent, a 'faux problème'. It seems obvious to me that there is a close interaction between the function and the incumbent. And to take an example we all know very well - I think we were lucky to have as the first Commissioner of Official Languages, Mr. Keith Spicer, but that Mr. Keith Spicer was also very lucky to have the function to present his views. So the function creates the man or the woman, and the reverse I think is also true.

DR. BERNARD FRANK

Frank, having come all this distance from Alaska, I think your question probably deserves better treatment than it got, at least by this Chairman and if there is anyone who wishes to comment, I think the floor is open. The question was: can the Ombudsman system survive a bad apple? Was that right, apple? Yes?

PANELIST

BRIAN GOODMAN

Of course, one of the major differences between the Ombudsman system that we all know about and the judicial system is the elaborate appeal mechanism that one has for most judicial decisions and in some cases quasi-judicial decisions. So that a judge who makes bad decisions or a bad judge who makes bad decisions is subject to having his decision overturned. And if he makes a number of bad decisions, a number of his decisions are overturned. So that if he doesn't start paying attention to what the appeal courts are

telling him, then he's going to have obviously the embarrassment of having most of his decisions reversed by appellate courts. Now the system is not the same with the Ombudsman. For instance, and this subject I hope will come up during the week, if the Ombudsman finds a complaint unsupported under most legislation that I'm aware of, under most Ombudsman Acts, there is no statutory right of appeal from that decision, or from that report. Now of course if the Ombudsman makes a report and does make a recommendation and that recommendation isn't implemented, there is a mechanism whereby the Ombudsman may go to the government and then ultimately to the Legislature either through a Select Committee if there is one, or not through a Select Committee. But I think my answer to your question would be that the judicial system has survived bad judges because of the elaborate appeal procedures that are open to a citizen.

PANEL CHAIRMAN

DR. BERNARD FRANK

I would say that the judicial system has survived bad judges because it's so integral a part of society particularly in democratic countries. I would suspect equally that the Ombudsman system is so new that it is not so entrenched in the society, and I would say that a given legislature in a given area would have no difficulty in ripping out an Ombudsman system if there is a bad Ombudsman, but I could not conceive of any jurisdiction ripping out its judicial system. So my own answer is that I believe that a bad Ombudsman might affect adversely Ombudsman legislation in that given area.

GORDON S. EARLE

Deputy Ombudsman of
Nova Scotia

I would like to comment on one point. We've been discussing the Ombudsman - the person or the function. I think in so doing it appears to me that perhaps we've overlooked a third factor which I think we could agree would be a very important factor, namely the public. And it's been mentioned, sort of in passing, that the public is in a sense homogeneous as if the public exists of all one response to the Ombudsman or to the institution. I think those of us who work in the field know that we cannot use that term, the public, in such

a vague sense. There are many people who would indeed approach the Ombudsman's Office with the express view of wanting to talk specifically with the Ombudsman himself. But then there are many others who do not really care who they talk to as long as their problem is resolved. And we've experienced all sorts. We experience people who call up, who ask our secretary if they can speak to somebody there, and the secretary is left wondering, am I not a person? And then there are others who will call up and say - to the secretary - can you help me right away - and start talking about the problem. And that person I suggest is not too concerned about the Ombudsman as a person, but is more concerned about the function and having his or her problem resolved. The other person would be perhaps more concerned about the influence that Ombudsman per se can bring to his or her problem. I think we should keep that in mind, that when we look at it, let's not forget about how the public itself is looking at it and let's not view the public as a homogeneous unity. Let's remember that there are differences among the public just as individuals differ. And I don't think there's any clear-cut answer to that question. It depends upon whom you are asking that question of.

PANEL CHAIRMAN

DR. BERNARD FRANK

I'd like to reverse the procedure and ask someone in the audience a question. And that is Sir Barnett. The Sachsenhausen case, it seemed to me, gave considerable status to the British Parliamentary Commission for Administration and established it as a viable institution. But I'm curious as to whether it was the personality of Sir Edmund Compton who was the Parliamentary Commissioner for Administration or whether it was the institution itself that influenced the government to say that we don't like this particular decision, but we're going to follow it because after all we have this Parliamentary Commissioner for Administration system.

SIR BARNETT COCKS

Mr. Chairman, you asked me to comment on the Sachsenhausen case a little more fully, I understand.

PANEL CHAIRMAN

DR. BERNARD FRANK

My question is whether Sir Edmund Compton's personality caused the government to accept his recommendation or whether it was the acceptance by the government of the institution of the Parliamentary Commissioner.

SIR BARNETT COCKS

I think it was the tremendous pressure which was raised in Parliament by backbench members. Sir Edmund Compton certainly was in agreement with their indignation. As you know it involved the treatment of prisoners in a concentration camp in Germany at the end of the War. And by a mistake probably made within the Foreign Office they said to the prisoners, oh well, you may have been included in a concentration camp in Germany towards the end of the War but you were really very well treated. This raised such indignation among the prisoners who were chained to the floor and had been given cabbage soup and no other nourishment until they lost an enormous amount of weight that the indignation boiled over, and it reached the Members of Parliament. They together with Sir Edmund Compton, launched an all-out attack on the ministers of the day and they were successful. It was sort of a combined operation between Parliament itself, the backbenchers and the Ombudsman which I think really brought the position of Ombudsman into the foreground. And Sir Edmund Compton, I think, surprised himself by the vigour of his work in that capacity. It does justify what I said this morning that Parliament is one institution and the Ombudsman is another, and they are complementary. They must help each other. And in the Sachsenhausen case I think they did and they proved that Ministers of the Crown can be brought to book by the Ombudsman assisted by Members of Parliament as readily as in the old days when you had the elaborate procedure of a vote of censure, and the fall of a government if the vote of censure is carried. I would like to appeal, as I'm on my feet at this moment, to Dr. Smith. I listened to his animate version of my controversial statement about the future of the Ombudsman function. As I see it, either you have a brilliant amateur as an Ombudsman from generation to generation without any build-up of tradition or you have a profession. And my argument was that in the future, after, as Professor Rowat so wisely said, the first Ombudsman - I would think it is desirable that there should be an Ombudsman tradition and a profession built up so that as a young man you would enter the Office of the Ombudsman hoping eventually to achieve such success in your work that you might aspire to a promotion of the highest rank, which as I pointed out is now the practice in the armed forces, in most American business companies like

the oil companies and in very many successful enterprises in Britain, that you enter on the ground floor and you move up. The idea of the gifted amateur may have worked occasionally in the 18th century but I wouldn't like to think it would work in Canada in the 21st Century which we're approaching within a few years. That, Dr. Smith, was what you were challengingly describing as a wild suggestion. But I wouldn't think it was so wildly out of line with modern developments. Remember, the first doctor was called a surgeon barber.

I don't think nowadays that the profession, the medical profession would welcome barbers within their ranks. They demand a life time of professional service before they appoint the professional head of a great medical institution. Thank you.

PANEL CHAIRMAN

DR. BERNARD FRANK

Thank you Sir Barnett. Dr. Smith.

PANELIST

DR. HARRY SMITH

Yes, if I might speak to that, Sir Barnett. I think you may have misunderstood me because I got the idea from you this morning in your remarks that one could be brought up from within the Ombudsman Office, for a person to become Ombudsman from within the Office. That's the first time that I've heard that view expressed in public. I think we have possibly discussed it maybe among the assistants to the Ombudsman in two or three of our conferences. I think it's a very interesting thing to say and it has great merit. So far in Canada, as Ombudsmen have been appointed, they haven't gone within the Office to get one, and I think that you let in some fresh air on that. Should we be closing the Office of Ombudsman, that is to say to have the title, closing it to an aspirant within the Office? My assistant, Gordon Earle would like to succeed me one day and I think that's a very healthy thing as in the same way it's a healthy thing for business offices and big business to have their assistant managers who want to become managers and so to, within the army. If a person doesn't want to rise in rank in the officer corps, why-people don't take so much interest in him. So I'm not putting down your idea at all. I'm trying very much to support it.

AMBROSE PEDDLE
Parliamentary Commissioner
of Newfoundland

I would, Mr. Chairman, like to make one comment. I think the question is sort of academic and for a few moments I was going to leave it to the academics - but I'd say to my colleagues, fellow Ombudsmen, that I'm not going to go home and agonize over the question of whether I or my function, which is the more important. I am more likely to relate it to an automobile. You can have a big spiffy engine and you're not going anywhere without a drive shaft and some wheels on it. And conversely you can have a beautiful set of mag wheels and Michelin tires and so on and you're not going anywhere without an engine. So really the question, while it makes interesting discussion, I suppose, it's not one that's going to bother me.

I think the question can be related to any field. If we have a conference of premiers are they going to ask the question - which is more important - my function as a leader or myself as a person? I think we can relate it to anything. You can relate it to your garbageman at home - which is more important the man who collects your garbage or his function of collecting garbage. Some garbagemen I'll thrust on him a bottle at Christmas time. I don't have to thrust too much either in Newfoundland - but, there are others I wouldn't. The point I'm making is that the service is appreciated, and I think the two are so related really, the function and the person, that I wouldn't want to see any of my colleagues go back and agonize over the question.

DR. BERNARD FRANK

Thank you. Dr. Robbins?

DR. MELVYN ROBBINS

A number of comments have been made about the high status of the Ombudsman in Canada. I'd like to raise a question on the status of the function - that side of the equation. Usually we think of three branches or three functions of government at least those coming from the Parliamentary democracies - the Executive, the Legislative and the Judicial. And I'm wondering if the function or the institution of Ombudsman is merely an aspect or adjunct of the legislative function, or if we're seeing historic entry of a fourth major function of government, that of the Ombudsman.

PANEL CHAIRMAN

DR. BERNARD FRANK

A very good question which should be answered by someone else on the panel. Brian.

PANELIST

BRIAN GOODMAN

You saw me volunteer for that. Well in my view the Ombudsman is an arm of the legislature. The Ombudsman, as the Act provides, is appointed by the legislature, responsible to the legislature, and makes his reports to the legislature. So that, very briefly, my view would be that it is not a fourth estate or whatever you want to call it, but rather an agent of the legislature.

PANEL CHAIRMAN

DR. BERNARD FRANK

My views would be somewhat the same. The legislature was the institution that created these books and books containing laws and the legislature was also the institution that in many cases gave wide powers to administrative agencies. And so, it seems to me that the legislature in an effort to bring things into balance, to help to combat the complexity of the society that the legislature helped to create, has established another institution which is basically an arm of the legislature in helping the citizen against the bureaucracy that the legislature, along with the executive, establishes. So, I would agree with Brian in his conclusion.

Are there any more questions? Professor Friedmann?

PROFESSOR FRIEDMANN

This is not really a question but perhaps the members around the table would like to know what one of their audience thinks about that question. One of the public of the Ombudsman are the civil servants and I have recently taken their pulse and asked them this very question, and Brian Goodman made reference to this in his introductory remarks.

The question was - is the Ombudsman now an effective institution and does it matter very much who is the incumbent at any one time. The answer was split in two to each of those questions, and I'll just take the second one. Does it matter very much who is the incumbent at any one time? I have at the moment only the answer from three provinces - Newfoundland, Nova Scotia and Ontario, but I am planning to get the answers from the other provinces as well. 70% of Newfoundland respondents, 75% of Nova Scotia respondents and 78% of the Ontario respondents said very much so - it matters very much so. Now this is almost unanimity. Statistically speaking there is no difference between the three provinces. And what I found surprising is that there should be no difference because my expectation was that there might be or should be some difference because the three Ombudsmen involved in various ways have, I think, given a different profile by their own expressions to me and by their own writings. I think perhaps Newfoundland and Nova Scotia tried to aim for low profile. In Ontario, either by intention or by circumstance, eventually the Ontario Ombudsman had basically a very high profile. So my expectation was, I didn't know how many would feel that the person mattered very much but I had an expectation that it would be different in Ontario from the other provinces. And it wasn't.

I'm looking around still for an explanation but at the moment my feeling is that the bureaucracy with intense day to day contact knows that whomever the person is in the Office it is important - the individual in the Office is important. So the individual makes a great deal of difference to them in their evaluation but it could be Mr. Maloney or Mr. Jones or someone else. The person would still be important and I think that's a very perceptive answer.

PANEL CHAIRMAN

DR. BERNARD FRANK

Thank you Professor Friedmann.

PROFESSOR FRIEDMANN

The question was - and it was a double question. Do you consider the Ombudsman institution an effective institution now and does it matter who the Ombudsman is at any one time - the incumbent at any one time. And the answer was structured - very much so, a bit, and a little, and so on and so forth.

It matters very much so who the incumbent is at any one time.

DR. RANDALL IVANY

Could I ask Professor Friedmann a question?

PANEL CHAIRMAN

DR. BERNARD FRANK

Yes.

DR. RANDALL IVANY

I wonder whether, in just following that up, Professor Friedmann, whether you asked or whether you have any opinions yourself as to why that question was answered that way?

PROFESSOR FRIEDMANN

I'm really in the dark myself on this. I said that one explanation I can give is that in the day to day experience, the bureaucrat knows it is very important with whom he is arguing, and I don't know whether this is the result of the fact that the selection process has always brought up sharp Ombudsmen or whether whomever is in that role will be asking sharp questions of the bureaucrat. But he does definitely have the impression that whomever is in that Office, it is very important, the individual. It sounds somewhat schizophrenic to think in these terms, but I think there is a lesson in there. Every individual who gets into that role will be seen by the bureaucrat as very important. And while we may argue from another angle that the function can well be carried on by a deputy Ombudsman, and Acting Ombudsman for some time, the bureaucrats who are interacting with the Ombudsman on a day to day basis have that feeling that the individual is very important.

GORDON EARLE

The question being a double question, was there any way to determine the answer to the first part of your question?

PROFESSOR FRIEDMANN

Yes, I have the first part listed separately. There were two answers.

GORDON EARLE

What were the percentages for those?

PROFESSOR FRIEDMANN

There were 2% of the respondents in each province, exactly 2% who felt that the Ombudsman institution was ineffective. There was not a single individual who said it was very ineffective. There were, in Newfoundland, Nova Scotia and Ontario respectively 51, 28 and 39% who felt uncertain. There were 47% - I'll take the provinces in the same sequence. Newfoundland, Nova Scotia and Ontario - 47, 62 and 56 who felt that the institution was effective. And very effective - Newfoundland 0, Nova Scotia 9, Ontario 4. So basically I think there's a pattern of the great majority declaring that the institution or the majority declaring that the institution is effective. There is some variation with what I say is in this case the more senior or longer lasting institution being judged more effective than the more recent ones. I don't know why that should be so but it seems that way.

QUESTION

Who were the people you polled? How did you select the people?

PROFESSOR FRIEDMANN

From Deputy Ministers down.

QUESTION

How many?

PROFESSOR FRIEDMANN

Two hundred in the smaller provinces and 365 in Ontario.

And the answers were, approximately 60% of the respondents answered. So this is really, as it was drafted, a census of senior administrators but since only 60% or so answered it's not really a census; it's a self-selected sample.

DR. BERNARD FRANK

Thank you Professor Friedmann. Inger Hansen?

INGER HANSEN

I'd just like to add an anecdote to the discussion. Some time ago I had a discussion with some public servants in the province of Saskatchewan, and I asked them the question - how did you feel about the appointment of an Ombudsman? They said that before they met Mr. Boychuk they were very anxious and very defensive. Once they knew what kind of a person he was, there was no trouble cooperating. (applause.)

PANEL CHAIRMAN

DR. BERNARD FRANK

Are there any more questions? Randall?

DR. RANDALL IVANY

Perhaps a question - perhaps a comment rather than a question. Most of the Ombudsmen have responded by indicating how they felt about this. It's not been unknown for me to disagree with my Solicitor. It's practically unknown for me to agree with Karl Friedmann. However, under the circumstances I think that basically I very much want the function of the Ombudsman, of the Office, to be the thing that is seen to be predominant and important regardless of the incumbent.

I was very interested in Professor Friedmann's analysis from the civil servants, from the bureaucratic end. I would be ever more amazed I think if such was the conclusion from the general public. But I do think it's very important from the office itself to be the predominant role - or to be predominant in the eyes of the public if not of the bureaucracy.

I want to go on from there to simply say a word with regard to Sir Barnett's comments. When he deals with the

possibility of budding Ombudsmen within the Ombudsman offices, I think there is, certainly in my view, some real danger here. I don't think that we who are functioning as Ombudsmen or Offices are in the business of training or bringing up Ombudsmen. I don't think that's our business. I think when he compares it to the profession of surgeons, you're really comparing apples and oranges. I don't think we're really dealing with the same thing at all. And I think it would be very unfortunate in most cases for a situation to arise in an office where one of the staff presumes to the point that they may succeed this or that incumbent. It may be that as time progresses in this country and others, that when other provinces or other jurisdictions are looking for Ombudsmen, they may well look at other Ombudsmen offices. But I see it as a very unhealthy state and one certainly that I would not desire to see arise where within the Office there are those who presume to inherit that office in due course. I think Sir Barnett said that this morning, that the routine he was suggesting had been followed in certain aspects of his own office and others. He used the term closed shop, and I think again that is an unfortunate situation. Certainly I would not like to see created within the Ombudsman institution anything that nearly approaches a closed shop operation. I would hope that in every jurisdiction there would be the widest possible opportunity for selection by a Select Committee to choose their Ombudsman hopefully where application can be made both by those who are involved in the work at the present time, but more particularly for those who are people outside the Office who may bring new insight and new enlightenment to that kind of a function.

PANEL CHAIRMAN

DR. BERNARD FRANK

There being no further questions, let me bring it to a close by summarizing if I can what has occurred here. Perhaps the question was inartistic because it required an answer to which was more important the Ombudsman or the function? I suppose if one wanted to come down on one side or the other, one would say that the conclusion was that the function, the institution was more important. But it would seem to me that I agree with Ambrose Peddle who said, so what, what difference does it make. We're not going to go home and worry about it, so that it really doesn't make any difference to the offices as to whether there is an

answer. However, I think the conclusion that could well be reached despite the question is that it is very important, it is vital to the Ombudsman institution that two factors be taken into consideration - the person of the Ombudsman and the functions of the Ombudsman. And with these remarks, we'll close this session. Thank you.

GILLES MORIN

I notice the presence of Mr. Vern Singer, one of the most ardent supporters for the establishment of the Office of the Ombudsman of Ontario. We're very pleased to have you among us, Mr. Singer.

VERN SINGER

Thank you very much. (applause)

ARTHUR MALONEY

Mr. Chairman, just before the proceedings of the afternoon come to a conclusion, mention has been made during the proceedings this afternoon and indeed this morning of the name of Sir Guy Powles of New Zealand. He was first appointed to his office, I think it was pointed out by Dr. Smith or Alex Weir, in 1962, and he held the Office until April 5th of this year. He gave leadership to the Ombudsman movement and to the Ombudsman concept to a greater degree probably than any other personality or figure involved in the Ombudsman institution, and it was the general feeling of the Ombudsmen of Canada that we should recognize in some way that was within our jurisdiction, the great contribution that Sir Guy Powles has made. We have no authority as the Ombudsmen of one country to confer titles on anyone including Sir Guy. I think if we had, we would have conferred upon him the title of Dean of Ombudsmen. But in order to make sure we didn't transgress on anybody else's authority, I have prepared the following resolution, and I would like my colleagues who are here present today to address themselves in the microphones to appropriate comments by way of seconding the resolution after I have read it. I happen to know that there's unanimity of feeling among us about what I am about to say:

BE IT RESOLVED:

WHEREAS Sir Guy Powles was Ombudsman for New Zealand from October 31st, 1962, to April 5th, 1977, and

WHEREAS Sir Guy so distinguished himself and the Ombudsman institution that his colleagues affectionately refer to him as "Dean of Ombudsman";

BE IT THEREFORE RESOLVED that the delegates to the 1977 Canadian Conference of Legislative Ombudsmen express their sincere gratitude to Sir Guy for the immense contribution he has made to Ombudsmanship around the world.

Dated at the City of Toronto in the Province of Ontario, this 12th day of September A.D., 1977.

I move the adoption of this resolution, and I'll sign the enclosed scroll and pass it to my colleagues whom I hope will sign it likewise and make appropriate comments into their respective microphones.

DR. RANDALL IVANY

Mr. Chairman, if I may? I would just like to say at this time and it seems so appropriate to do so - as we sign this document with great enthusiasm that the Institute which is now in its formative stage in Edmonton, the International Ombudsman Institute, has made the initial approach to Sir Guy to come to Edmonton next year for a period of time in which he can be Ombudsman in Residence at the institute. We thought of him not simply because he had recently retired, but because of his stature and because of the work he has done as the Ombudsman in New Zealand and indeed as the Dean of Ombudsmen throughout the world. And I have certainly great pleasure, as I know all of us gathered around this table will have, in seconding this resolution.

GEORGE MALTBY

Yes, Mr. Chairman, I have pleasure in seconding the motion. I recall Sir Guy at Edmonton last September when there was a discussion on the function of the Ombudsman. We all have the same object in view but he said in my father's house are many mansions. And I think the point that Sir Guy was trying to make is that we're all aiming at the same thing, bringing about redress of grievance but we all have our own individual approaches. Thank you.

KENN BARKER
Assistant to the
Ombudsman of Saskatchewan

On behalf of the Ombudsman of Saskatchewan, I'm sure that Saskatchewan heartily endorses the resolution. And I take pleasure in signing on behalf of Saskatchewan.

DR. HARRY SMITH

Among Sir Guy's many distinctions, which I cannot help but note and remark when I first met him, and I have been so warmly disposed toward him ever since, is the fact that he wears a bow tie very, very well.

DR. LUCE PATENAUDE

Je seconde cette résolution avec d'autant plus de plaisir qu'il existait entre mon prédécesseur, Monsieur Marceau et Sir Guy, la plus solide des amitiés.

(I second this resolution with all the more pleasure considering the bond of friendship that existed between my predecessor, Mr. Marceau, and Sir Guy.)

AMBROSE PEDDLE

Mr. Chairman, I endorse the resolution wholeheartedly without reservation. If Sir Guy has any objection to being referred to as the Dean of Ombudsmen, he can send it back.

JOSEPH BERUBE

I am told that a former Attorney-General from New Brunswick, after hearing Sir Guy speak in Montreal, came back to New Brunswick in 1966 and spoke to his colleagues in the Cabinet about this new concept called the Ombudsman concept, and in 1967 the Office was created in New Brunswick. So it's indeed a pleasure to have met Sir Guy last year in Edmonton and it's a pleasure to sign this resolution.

ARTHUR MALONEY

Mr. Chairman, could I just say in conclusion that I have before me a letter from David A. Tickell, the Ombudsman of the Province of Saskatchewan which I'd like to read into our record. It is addressed to me and it is dated September 9th, 1977, and was handed to me by his representative and the representative of his province, Kenn Barker.

It reads as follows:

"Dear Arthur, this letter is to convey to you and my other colleagues my sincere regrets that I am unable to attend this year's National Conference of Canadian Ombudsmen. This is a particular concern to me as this would have been my first opportunity to meet many of the participants. Fortunately Saskatchewan will be most ably represented by Mr. W. K. Barker of my Office. You will recall that Mr. Barker was Saskatchewan's Acting Ombudsman prior to my appointment. If a convenient moment is available, it would be greatly appreciated if you could communicate to the conference delegates both my regret at not being in attendance and my best wishes for a truly successful conference. Yours sincerely, David A. Tickell."

GILLES MORIN

Dr. Ivany?

DR. RANDALL IVANY

Thank you Mr. Chairman. I want to raise a point of order which I have discussed just briefly with both Mr. Maloney, Mr. Cavanagh and with Miss Inger Hansen. I know the reason for her absence from the inner circle of this table, but I think I would not like it to be misinterpreted in our meeting here, because I think at other functions it has certainly been agreed that Miss Hansen is accepted as a full-fledged, full-blooded Ombudsman. And simply because in this country she reports to a Minister while some of us report to the legislature has little bearing on the matter as a whole. And I personally feel that the attention of this meeting should be drawn to the fact that Miss Hansen is not at the table and if possible for those of us who have appreciated so much what she has done, and this

will be her last meeting with us as Correctional Investigator, I personally would like to see her join us at this table if that is at all possible.

ARTHUR MALONEY

Mr. Chairman, speaking for myself, I would like to see Miss Hansen join us too, provided those are her own wishes.

INGER HANSEN

Mr. Chairman, if the moment is appropriate may I speak for a couple of minutes? I should like to bring greetings to this meeting from Gordon Fairweather who has just been appointed Human Rights Commissioner. He asked me to thank you all for your invitation for him to be here. Unfortunately, because of the pressures on him in terms of time and in terms of setting up the Office, he could not be here. As you know, Mr. Fairweather was appointed Chairman of the Human Rights Commission, and I shall be very happy to join him as of the 1st of October this year.

And thank you very much, Dr. Ivany, for asking me down, and thank you all for accepting me. I'll be here tomorrow. (applause)

GILLES MORIN

Il y a une réception après cette rencontre de 5h.20 à 7h.00. Il y a des autobus à l'entrée de Richmond et l'entrée principale de l'hôtel et l'autobus vous ramènera à 7h.15.

One more announcement before we end this session. (There will be a reception from 5:30 to 7:00 hosted by the members of the Select Committee on the Ombudsman. There will be buses leaving from the Richmond Street side of the hotel at the entrance of this building.)

I now declare this session closed.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 13, 1977

Morning Session

"THE OMBUDSMAN AND ACCESS TO INFORMATION"

CONFERENCE IS BROUGHT TO ORDER

ELLEN ADAMS
Director of Special Services
Ombudsman of Ontario

(banging of gavel) The third session of the Canadian Ombudsman Conference is called to order.

Now I'm sure that everyone wants to hear from the panel. I want to introduce to you a man who has never been as public as when he went private, our Chairman for the panel this morning, The Honourable John Turner. (applause)

PANEL CHAIRMAN

THE HONOURABLE JOHN N. TURNER, P.C., Q.C.
Toronto, Ontario

Thank you, Your Eminence, ladies and gentlemen. The panel this morning is entitled The Ombudsman and Access to Information. As I understand it we are to explore, among ourselves first of all, and then with you, what interface there should be between the Office of Ombudsman, as presently constituted in the Canadian provinces, and whatever freedom of information legislation we may or may not obtain either from Parliament or from the various legislatures, although we do have an interesting precedent from Nova Scotia.

Our panelists are in order of speaking. The program I've been given asks me to outline the subject for about ten minutes or so, then to call upon the distinguished gentleman to my left, Mr. Jed Baldwin, who is the member of Parliament for Peace River and has been for many years, who has been a crusader in and without Parliament for freedom of information legislation.

Then I will call on Mr. MacDonald, Donald MacDonald, the former leader of the New Democratic Party in Ontario, still the member of the Provincial Parliament for York South, himself a sponsor of freedom of information legislation in the Provincial Legislature.

I'm not going to expand on these introductions because all of you have among the material you've been given, full biographies, I understand.

We were to have had as our third panelist, Garde Gardom, the member of the Legislature from British Columbia from Point Gray, the Attorney General of British Columbia. I received a telegram yesterday from Mr. Gardom.

"Please let me reiterate my most sincere regret in not being able to attend the Canadian Conference of Legislative Ombudsmen. I'm most sorry that the notice I had to grant you was so short but as explained I had no other alternative. Everything Arthur Maloney does, he does par excellence. I know that you will have a most highly stimulating and successful conference."

Faced with that situation, the Ombudsmen from Ontario and the conference organizers were able to persuade and contact only yesterday Mrs. Margaret Campbell, the Member of the Provincial Legislature from St. George's, former Comptroller, Alderman, City of Toronto, well known and articulate. We are most grateful to her for having accepted to complete and complement our panel on extremely short notice. (applause)

Je vois parmi les assistants aujourd'hui les représentants du Québec, y incluant le protecteur, la protectrice du peuple du Québec. Et nous sommes ravis de leur assistance et de leur présence. Si, dans la discussion, il y a des questions qu'ils veulent poser ou des remarques qu'ils veulent avancer en français, je ferai de mon mieux d'arranger que les questions soient dirigées soit à moi-même, soit à mes collègues dans le panel.

(I see in the audience today the Quebec delegation, including the defender of the people of Quebec. We are delighted to have them here with us. During the discussions, if there are any questions that they would like to ask or any comments they would like to make in French, I will do my best to see that the questions are directed either to me or to my colleagues on the panel.)

Well let's get down to business. I would like to capsulize the concept of freedom of information, at least as I understand it. Beginning first with the proposition that the strength of the democracy lies in the mutual confidence established between those who govern and those who are governed, and that information is the life blood of that mutual confidence. And that openness is essential to the transmission of that information necessary to that confidence. And that no democracy can work without an informed, involved citizenry. People have to know what government is doing or what government is trying to do, or what government is intending to do. People must have the facts, the motives and the reasons, if government is to be fully responsive to the people and fully accountable to those who elected it.

In Canada there is no legal right to know. There is no legal duty on a government to inform, to make information available. At the federal level, secrecy is the fact sanctified by the Federal Official Secrets Act, by the Civil Servants Oath of Office, and by the way the doctrine of ministerial responsibility has been applied. This holds true for the provinces with the possible exception of Nova Scotia.

In Canada the underlying premise is that everything is secret unless it is otherwise declared. That proposition is not consistent in my view with a healthy democracy. The burden of proof should be reversed. Everything should be open unless there is a justifiable reason for it not being so declared.

I've stated since 1969 in propositions I put them to the Canadian Bar Association that everything should be disclosed unless there is some compelling reason to keep it secret. Surely that is what freedom of information legislation is all about. What we need is a statutory fabric for that both at the federal and provincial levels which takes into account our own unique properties of government. I'm not going to get into the Swedish precedent, I'm not going to get into the United States Freedom of Information Act of 1966 as amended in 1974. There are aspects of parliamentary government in Canada that have to be taken account of.

We have been moving in this direction but not quickly enough. There is currently a Joint Senate-Commons Committee. Mr. Baldwin is a member. He's had the unique experience both before that committee and before an earlier committee of the House of Commons in having his own bill reviewed. The Secretary of State of Canada has produced a Green Paper. The Province of Nova Scotia has passed a Freedom of Information Act. In Ontario there have been several private members' bills tabled in the Legislature including one by my colleague this morning, Mr. MacDonald. And also a Royal Commission was appointed to study the matter in depth.

If we work on the assumption, which we have to this morning, of open government and the necessity for freedom of information, the real debate which has been joined both in Parliament and in the Legislatures is over the limits and the mechanics of the legislation. My own personal view has been that the disclosure net should be case wide, that the narrowest interpretations should be given to any exemptions, and that the list of exemptions be kept to a few essentials: National security, although that can be overworked; invasion of individual privacy and that involves the whole matter of deciding between the public's right to know in a particular matter and the individual's right to privacy if he is involved in that particular matter; and finally, confidential advice to ministers under our system of parliamentary government.

Here again one should separate the advice given by civil servants to ministers and the factual background for that advice. I've always felt that you could peel off the facts, make them public, keep the advice confidential.

There are others, mostly in government, who have drawn a much longer list and the effect has been really to emasculate any freedom of information legislation.

As for the mechanics, the main issue is who should adjudicate disputes between government and citizens as to what information would be exempt and whether that information follows under any exemptions. I've always believed that no one should be a judge in his or her own cause. There are those who have suggested that a parliamentary or legislative officer be appointed to decide whether information should be produced under any statute. There are those who have suggested that perhaps the Ombudsman would be a proper adjudicator. I've always believed, and that view is not shared on the panel, I don't think, that that matter ought to be left to the courts.

It's the refusal in the Green Paper, published by the Secretary of State, of excluding the judicial process which of course aroused the most criticism of that Green Paper, particularly from the Canadian Bar Association.

I believe in short that a freedom of information act must confer ultimate adjudication authority on the judiciary. And my reasons are quite clear. I'm aware how time-consuming and sometime how expensive a court action can be. No forum, however, in my view is better suited or more familiar with balancing private and public interests or in giving meaning to statutory language or in deciding the application of exemptions from statutory language than a court. I believe that the court's role would be particularly valuable in probably the most difficult area of decision, namely the conflicting rights between the public's right to know and an individual's right to privacy in any particular factual situation.

Well whatever legislation may be adopted, whatever a statute might say either as enacted by parliament or by a legislature, openness of government will remain an attitude of mind. There may be no truly effective way to guarantee public access to information. I believe the courts have a role. In the ultimate, however, no matter what a statute might say, or what the courts might do, or whoever the officer is to decide the application of that statute, access to information will depend on the good faith of those in government.

How does the need for legislation guaranteeing open government relate to the function of the Ombudsman? First the panel may

want to explore and you may want to explore areas of some duplication and overlap. I believe that both institutions - that of the Ombudsman, that of freedom of information - exercise essentially distinct roles. I don't believe that the minor degree of overlap would be much of a problem. Mr. Maloney characterized the role of the Ombudsman in an early address to the Bar here in Ontario when he said that the Ombudsman, I'm now using his words,

"was a successful or effective means to humanize government and to smooth the rough edges of the relationship between citizens on the one hand and bureaucracies on the other".

In other words, if I can interpret what he said, the Ombudsman is intended to be an investigator, a problem solver, a trouble shooter, acting on complaints by agrieved citizens. In the exercise of these functions, he has access to information under the statute governing him. In the exercise of those functions, he can reveal to the public such information as he deems necessary to explain whatever decision he makes from case to case. Some of that information would be available under freedom of information legislation.

I feel that the role of the Ombudsman, having a problem solving focus, could be made more effective for its expertise and familiarity with the intricacies of the bureaucracy unknown to the average citizen, if more of the legislative and regulatory process were open under a freedom of information statute.

But the exercise of the Ombudsman's function - solving problems for citizens is no substitute for freedom of information. Freedom of information depends essentially on citizens being able to approach their government and find out what a statute says or what a regulation says. It does not necessarily involve administrative assistance. A citizen should be able to ask for the information with no intervening Ombudsman, no intervening member of Parliament. Although the Ombudsman of course could be of assistance. What I'm saying is that freedom of information implies that open government is an end in itself. And should be independent from the Ombudsman's function.

In the event that freedom of information were passed in Canada, or in Ontario or the other provinces, it's probable that the nature and makeup of requests to the Ombudsman might change. It might be that the Ombudsman's work load could be reduced in certain areas because I'm told that some people come to the Ombudsman just because they want to know what it was the government did to them. Under freedom of information legislation, they could ask for themselves. On the other hand, the workload of the Ombudsman might help to process such requests for information

under both provincial and federal freedom of information acts. The question might be posed to as to whether the Ombudsman's office itself ought to be subject to freedom of information legislation whether your office ought to be included within the element of the statute.

Finally, someone proposed that the Ombudsman should be the adjudicator under any freedom of information legislation over dispute as to whether any exemption under that proposed legislation should apply to the particular factual situation. I've stated my preference. I believe the judiciary should perform the role. I believe the Ombudsman is an investigator. I think it would be perhaps awkward if he were to combine the role of investigator with that of adjudicator. The question of appeal would also be relevant. Under legislation applying in the provinces as I have read it, there is no appeal from an Ombudsman's decision. Freedom of information legislation surely should contemplate some appeal process.

Those are some of the questions, ladies and gentlemen, that I believe our panelists may want to address themselves to. They will of course feel free to go beyond the scope of that I've tried to outline, and I understand that you're free as well. I'll just summarize by saying that open democracy is a prerequisite to a healthy government and a healthy body politic. Without it there can be no real involvement, no real participation. Without it there will be continual and continued distrust of government. Openness is the beginning of an active citizenry, informed and thereby alert. Openness is the weapon that citizenry will have to force governments to become more responsive, elected representatives to become more accountable.

Having said that, Jed (applause) - without in any way derogating from the capacity of the Chairman or our other two colleagues, you know more about this than anybody else around so let's have your views.

PANELIST

GERALD W. BALDWIN, Q.C., M.P.
Peace River
Province of Alberta

Thank you Mr. Chairman. It's appropriate that I be seated well to the left of all my colleagues up here because it gives me a chance to capsulize my favourite story how I received exceptionally favoured treatment in Moscow after being introduced as a Red Tory. Prior to that time - I was then the House Leader of the Opposition - the House Leader of the Opposition is less well thought of, if possible, or about equal par in Moscow as he is in Ottawa.

Now I'm glad to be here. I'm glad to see some of my old colleagues who graduated from the House of Commons. Arthur Maloney, a great friend of mine, Ambrose Peddle sitting over there, John Turner. The first two I mentioned are of course now isolated from public life. I see John managed to keep an avuncular interest in what goes on in the House of Commons from time to time and I appreciate that. But with your views and freedom of information, John, maybe we'll see you back there.

Now we all share a common problem. People come to see you, distinguished Ombudsmen, as they come to see myself or Donald or Margaret, because they've been harrassed or hassled or feel helpless. And they seek assistance. They want to be told that help is available for them. There's a little story I can tell you that briefly illustrates that and it's factual, something that happened to me just a little while ago. I was up in my constituency in Peace River at one of the more recent homestead areas just getting out of the frontier stage. And one of the competitions at this fair I was at was a contest for the best homesteader. And included in the tasks these contestants had to perform was to milk. And they didn't have a cow so they brought a goat in. There are eight contestants, all of them unacquainted with the practice of milking a goat. After the eighth attempt, this poor unfortunate goat looked up at me - I was on the platform - and bleated, as if to say with a resigned and dejected look - these eight people have been engaged in a clumsy way in milking me. I have no milk left, what are you going to do about it? And as I looked at the face of the goat, I thought well now that's a familiar face. And I remembered - it was the Canadian taxpayer.

I hasten to reassure John to tell you John that you were one of the most adept and did it without any pain and suffering. Fortunately you were not there at the time when there was an attempt made to control the goat by hoping it would give more milk by feeding it less.

However, on this issue, on the issue of public accountability and freedom of information, the problem today is that there is abroad in this land a political distemper of disillusionment and disbelief. It's firmly rooted. I'm not just speaking about the federal government, I'm speaking about a lot of governments both in Canada and outside Canada. There's a calendar of incompetence and error, indecision and scandal, and corruption, much of it, in my opinion, arising because of the obsessive secrecy which now characterizes governments. Secrecy spawns incompetence and indecision. The more you can hide issues the more indecision and incompetence and scandal are produced. And I think this attitude has got to be considered against the background of massive intervention in government that exists today. Some distinguished figure once said that the state has

no business in the bedrooms of the nation. As a matter of fact the state is in every bedroom from the bathroom to the boardroom, and this is a problem which we have to face.

I think the attitude therefore is that we've got an abrasive and raucous dichotomy rather than the elements of harmony which must exist. As the chairman said - to govern is a trust. For every trust there must be an accounting. And there's no accounting today and the people know this and grow restless. And the problem fester and multiply and increase. You cannot solve those problems unless there is an understanding, a trust and a confidence.

The problems we have of inflation, unemployment and energy, law and order, the frayed and fragile bonds of confederation, these are tough, difficult, deeply rooted problems. But man created them and society can solve them. They cannot be solved without a renaissance, a greening of government, a return to the trust, sympathy and co-operation. Governments are going to be wrong; we all expect that. But when governments are wrong and obviously hide and make secret what they have done, in the modern world of communication, that the difficulties we have will not be solved.

It may be possible for the federal government to lock into one room for a year 100 economists and civil servants. It might be a good idea, Mr. Chairman, to lock them in for two years. In any event, they may come out with a brilliant scheme and paper for the solution of those problems. But that solution must be examined in the context of millions of individual decisions by people and thousands of individual decisions by corporations. That is the problem which exists today.

I don't suggest to you that freedom of information or, put in another way, the pricking of the balloon of government secrecy will solve that. But it will be a symbol of the fact that there is an intent to return to a situation where people will once more have a chance to believe what their governments tell them.

I'm not going to enlarge on that. I think the fact is that most people at least give lip service to the belief that there has to be freedom of information and there must not be obsessive government secrecy. As the chairman has said, several provinces have acted. Nova Scotia has enacted legislation. I think two other provinces have produced legislation which is still being considered. Several other provinces are considering it, as Ontario, with a Royal Commission. In Ottawa we've got a Green Paper, which at least is a recognition that there is a problem. A few years ago we couldn't have got a Green Paper because people didn't recognize that there was a difficulty. It's a good technical paper. I disagree with the solutions which are under-

lined and emphasized in it. Those solutions will never bring about the situations we need. But at least it has been accepted that the difficulty is there.

Now I want to mention one more thing before I go into some of the detail which may affect the Ombudsman. John mentioned the Official Secrets Act. He mentioned one or two other statutes. I should tell you that some research I have done indicates that there are at least a minimum of 72 federal statutes which prohibit federal departments, governments, agencies or officials from giving information with sanctions attached.

The Official Secrets Act is of course the most typical, intended to deal with espionage, war time activities. It was, without any debate in the House of Commons in Ottawa, with virtually little or none in England, extended to cover domestic matters. That will have to yield to very considerable change and amendment and not just of cosmetic nature.

So what do we need in an act and how will it affect, how could it affect, how may it affect, Ombudsmen and their duties? Certainly there has to be a statement hopefully contained some day in a constitutional amendment, if not in the Bill of Rights, then at least in 11 statutes, one federal and ten provincial, that every citizen is entitled as a right to secure access to government information. It should have precisely spelled out and carefully defined exemptions, with the onus on the government to bring any application for information within the exemptions if they wish to contest. There should be a means of review by appeal, with an independent tribunal - I'll come to that in a minute - whose decisions are binding on the government.

If you accept that then I think you'll have to throw out of the window the discredited, outmoded presently mythical theory of ministerial responsibility which, in my opinion, no longer exists, if it ever did. It certainly no longer exists today in the kind of modern government we face - with a simple, inexpensive and summary method allowing the citizen to make his application and/or to make his appeal as the case may be. That's the kind of act - I haven't the time to go into all the other details - but these are absolute minimum ingredients.

How would it affect the citizen? How would it affect the Ombudsman? In my view, and I must look at it first in the federal context where there is no Ombudsman and where I see the situation at the present time, I don't think it's likely, and not for oppositon from me, but I don't see the likelihood in the immediate future of a federal Ombudsman. But in the provincial scene I think an act would apply to the Ombudsman. Now I don't think that would do any great disservice to the function because, if in the course of your investigations, you are compelled to secure information, data and documents which

you have on file, it falls either within the category of information which is available to the ordinary citizen, in which case if you gather it up he or she would equally be able to obtain the information. So I don't think it matters a great deal if the information is obtained from you or from the government. Going beyond that of course I think that you'd be back in the same position as you are - information that you have obtained as a result of your essential investigations, documentary evidence would and should be made available to the extent that you believe it is essential in the reports which you have to make. And I think the reports should be made, because to secure the continued confidence of the public it is important the government allow you, or you take the right, to let the public know what you are doing. I think that's tremendously important.

So going beyond the type of information which would be available to the citizen under a freedom of information act, anything else that you gather up which falls not within that category, you would have some discretion as to releasing it.

What about your function, if freedom of information legislation is enacted. I think you have a role to play there. Maybe approximating the situation in Sweden with appropriate changes made for the fact of differences in government system and style in Canada. My judgment would be that in many instances the Ombudsman services could be employed in the first instance in securing of information which a citizen asks for. You have a very good relationship with the government departments and the civil servants, probably frequently on a telephone first name basis. I think that's good. I think that's the way it ought to be. I find from my travels, from my discussions with people that most civil servants, certainly those below a certain level, favour a freedom of information law. Our experience in discussing this in the United States in Washington and in other countries, Scandinavian countries is that most people especially those in information services would much prefer to be doing something useful and valuable such as this, rather than having the talents limited to putting a halo and wings on their minister or on the heads of agencies they work for. The people are there, the experience is there. And I think the capacity of the Ombudsman services working with appropriate freedom of information officers in each department, in each agency would probably mean that in most of the contested cases, probably 70-75%, and that's a figure I've simply plucked out of the air, it would be possible to work out a reasonable arrangement so that you could obtain the essential documents for the citizen.

I don't look upon you and I think it would be quite wrong to suggest you should have a judicial role. I think that would interfere with your capacity but as Ombudsman, in the same way

as the Ombudsman in Sweden does operate, a citizen there has concurrent avenues. He can go to the Supreme Administrative Tribunal, and in my belief I don't think that a condition precedent to getting to the Supreme Administrative Tribunal in Sweden necessitates first going to the Ombudsman. So I think you would be a very effective body and have a very useful role to play in securing in the first instance, documents and information or documentary information rather, for citizens who have been denied that information by government officials. Now that's a thought that we can kick around later on from the other panelists. I'm going to stop at this stage, Mr. Chairman, because I feel there will be a lot of questions to be asked. I've just given you the benefit of my views.

I think we'll try this thing a lot further. I have a feeling that we are going to have a freedom of information law. Like all other things which are born, the period of gestation is always too long. I feel that the public demands a good law, that we are at the crossroads. We are a mild, a moderate and a reasonable people and violence is not part of our nature. But any people used to governing itself, any society self-regulating which does not secure by democratic and parliamentary means the reforms and the changes which it is entitled to get, will always find other ways. I suggest that while freedom of information is not the millenium and will not change the nature of the government, it will be a very long first step to bringing back the openness, honesty and decency which is necessary for any democratic society. Thank you.

PANEL CHAIRMAN

JOHN TURNER

Thank you very much, Mr. Baldwin. Mr. MacDonald.

PANELIST

DONALD C. MacDONALD, M.P.P.
York South
Province of Ontario

Mr. Chairman, I was interested, Jed, in your report that your research had indicated that there were 72 statutes at the federal level which specifically exclude the granting - the giving out of information. I thought you'd be interested to know that in a chat I had with one of the staff of the Royal Commission which is getting underway in the province of Ontario the other day, I discovered that in their research work this summer they had discovered there are 80 odd in Ontario. So as usual Ontario is bigger if not better than anywhere else.

Mr. Chairman, we live in a democracy, at least there's a very widespread belief that that is the case, and there's an awful lot of rhetoric in which we all indulge to perpetuate that belief. Our parliamentary system stemming directly from the British tradition is viewed as the sort of institutional core of our democracy. In fact, if we get away from the widespread belief, in fact our parliamentary system existed long before democracy was even contemplated. The arbitrary powers of the Crown were wrested by Parliament down through the years, down through the centuries, and with the growing dominance of parliament by the executive branch of government these days, most of those powers rest not in Parliament but in the executive

In addition our parliamentary system is characterized by a tradition of administrative secrecy. It starts right at the top with the Cabinet whose deliberations understandably are conducted in secret and it is bolstered throughout the whole bureaucracy of the civil service where every civil servant takes an oath of office which forbids him to give any information out other than what is authorized. In short, the public image that our parliamentary system is the institutional core of democracy is really a bit of popular mythology.

In essence, our parliamentary system was inherited from an undemocratic past. It is fundamentally very undemocratic. The parliamentary system is in fact little more democratic than the modern corporation where power is invested at the top, lip service is paid to the exercise of that power being controlled by an annual meeting, in the instance of the corporation, and by the legislature in the instance of Parliament. But in a majority government situation, as we all know, sometimes that control is very minimal. Now I concede that I may have exaggerated my point in attempting to make it by that analogy but I think it's essentially a valid one. And my contention is that without an Ombudsman and without freedom of information, our parliamentary system is going to remain fundamentally undemocratic. The Ombudsman is the agent through which the aggrieved citizen can get information concerning an injustice which he or she feels that he has suffered and hopefully he or she will get some redress of that injustice. That is important. I think it's very important in what I would describe as the democratization of our parliamentary system, building a system that is more responsive to those it seeks to serve.

But dare I suggest even in the August assembly of all Canadian Ombudsmen that even more important than the Ombudsman is freedom of information. Namely that the citizen should have the right, that he should have access, as a right, to information regarding both the formulation of the policies and the implementation of the policies which today affect almost every aspect of his life. No democracy can work without having an informed citizenry. You said that, or are accredited with having

said it, Mr. Chairman at one occasion, and you've repeated it today. Without an informed citizenry there cannot be a democracy. At best it is going to be a benevolent paternalism which can always degenerate into something that is much worse than that.

Now everybody agrees - again Mr. Chairman as you pointed out - everybody agrees that we've got to have more open government, that we've got to formulate better communication policies. The disagreement arises as to how you're going to achieve that. And sometimes the disagreement indicates the limitations with which people really want an open government, the extent to which they really want to stick with the status quo. There are two broad avenues. On the one hand, there is the avenue that was suggested by the Committee on Government Productivity, the COGP in Ontario, or by the Wall Report in Ottawa, that there should be a grass roots reorientation of the thinking at all levels of government from the Cabinet to the Ministers down to the whole range of civil servants, a reorientation of their thinking to rescue them from that tradition of administrative secrecy, to exhort them in their responsibility to make information available to the public. But you used the phrase, Mr. Chairman, an attitude of mind - and I want to suggest to you that an attitude of mind, like life styles, is not changed by exhortation alone. That if you have merely exhortation and the proclamation that this should be done without some backing, some backing in law, some laying down of procedures that must be followed, then I suggest that the old traditions are not going to be altered. I'm convinced that approach will be at best marginally beneficial. And the time lapse in achieving even in the marginal gains is going to be unconscionably long.

So we move to the second avenue, the second approach, that there should be a clean break with the deeply imbedded tradition of administrative secrecy. That instead of all government information being secret, except that which those in authority deem appropriate to release to the public, that all information should be public except that which falls into exempted categories and that those categories should be as precisely and as narrowly defined as possible. That this right to freedom of information can be achieved only if it is set forth in a statute along the general lines of that you get in Sweden or in the United States adapted of course to the different conditions in each jurisdiction and our traditions of government.

In fact I think there's an interesting analogy here. You will all recall that there was a day a society was trying to come to grips with the problem of discrimination among individuals in that society on the basis of race, colour and creed. But it was argued that you couldn't legislate prejudice

out of existence, that you could pass a law but it isn't going to change what was in that person's mind, that it's an educational process. But the day came when most jurisdictions have stated, have recognized that while there may be an element of truth in that that there is validity in passing a law which stimulates that to discriminate against a person on the basis of race, colour or creed is illegal. And that if you do, you will suffer certain penalties.

I want to suggest that we have reached the same stage, broadly speaking, in the whole approach to freedom of information and the right to it. You can talk about it, you can exhort about it but the only way in which you are going to assure that it is going to be there, by all those who are going to be, in varying degrees, in a position to control it, is if you have a statute which lays down at least the procedures by which the average citizen can get that information. Whether or not there need to be penalties if it isn't given is another matter, because that's irrelevant in this context.

Now some people have argued, if I may tie my latest comments to my initial discussion about our parliamentary system and its essentially undemocratic nature. Some people have argued implicitly if not explicitly, for example the Attorney General of Ontario in his statement in his tabled document in the Legislature when the Royal Commission was established last spring. They've argued that such free access to government information as is provided in the United States or in Sweden, might have dire consequences for our system of parliamentary government, that in some fashion or another the basic tenet of Cabinet solidarity, the collective responsibility of government, the impartiality of our Civil Service will be undermined if you have freedom of information. Now in my view, Professor Donald Rowat, who I think was with us yesterday and today has answered very convincingly all of those arguments. Far from freedom of information undermining responsible government, dare I suggest that freedom of information offers the prospect for the first time of having genuine responsible government.

Far from freedom of information threatening our parliamentary system by an overlay of something which is foreign to our system, it may well be that freedom of information will be a major means of saving our parliamentary system. Because what threatens our parliamentary system today, and Jed you pointed it out, as did our chairman, is that there's a growing alienation on the part of the average citizen. The very necessary mutual confidence between the citizen and his government has sadly deteriorated. That alienation is born, in good part, because the citizen feels that he's outside. It's 'we' and 'they' - they the government, and you can't beat city hall whether city hall be locally, municipally or provincially. And it arises because the citizen feels that he's on the out-

side, that he has no access to his government, that he is denied information in both the formulation and the implementation of policies which vitally affect his interests.

Now just let me sum up for purposes of this lead-off at the panel level. In my view, the Ombudsman's Office is an agency through which the aggrieved citizen can get redress of an injustice. It is, as I think your theme yesterday and your consideration was, that the Ombudsman as an Extension of Democracy. But even more so, even more fundamentally, as far as all the citizens are concerned day in and day out, freedom of information established as a right by statute meets an even more fundamental need. Together they offer the prospect of some democratization of parliamentary government whose basic structure and whose traditions of administrative secrecy we've inherited from an age past.

Now there are many questions regarding the relation of the Ombudsman and freedom of information and governments which have been postulated for the panel. I'm going to leave those until they can be responded to by way of questions or in the exchange that may develop in the panel itself. Thank you.

PANEL CHAIRMAN

JOHN TURNER

Thank you very much indeed, Mr. MacDonald. Mrs. Campbell.

PANELIST

MARGARET CAMPBELL, Q.C., M.P.P.
St. George's
Province of Ontario

Mr. Chairman, Your Eminence, Mesdames et Messrs. I trust that I may take the liberty of welcoming all of you into the great riding of St. George which I represent in the House. And secondly, may I say that I have never been known as a long ball hitter, so if today I lay down a bunt in my capacity as a pinch hitter I hope you will bear with me and that you will take it that it is my lack of ability in this capacity and not that of the team which I have the temerity to represent here today.

To introduce the subject from my point of view, I can do no better than to quote the conclusion of the committee chaired by Mr. D. F. Wall of the Privy Council Office which report was released in April 1974. In which they say: (a) that for lack of a coherent and comprehensive policy for the provision of information to the public, based on clear and acceptable

principles, the process of government in Canada - and I may also add, in Ontario - is becoming increasingly difficult for those who govern and increasingly incomprehensible to those who are governed; (b) that the governmental function to provide information is in essence woven into and inseparable from the function of government itself. To govern, as our Chairman said, is to inform. To be well governed is to be well informed. And further, that while the fulfillment of the public's right to information must be balanced against the fulfillment of the right to be protected against the abuse of information, the public also has a right to know the means by which that balance is struck.

Obviously then from that quotation, I am dealing directly with freedom of information available to the public through the legislature and only peripherally to the subject as it pertains to the Ombudsman's Office. Again when we discuss freedom of information, we look first at the right of the individual to have access to his or her own file. This question has to some extent been addressed and is undergoing an evolving process even in such matters as adoption procedures. It would be interesting to know, however, from the Ombudsman of Ontario himself, how many cases do go to him simply because people are denied the right of information.

However, I shall deal in specific terms with the matter of the right of the citizen to know what the government is doing. To illustrate my concerns, I should like to cite some of our experiences in the Provincial Legislature. In preparing our submissions to the commission established for the purpose, we have put together an eleven page document which spells out our efforts to obtain information from the government and particularly in this case the Ministry of Health with reference to a private enterprise which receives some \$7 million annually from the government. We have used the devices of oral questions, of questions on the order paper and out of sheer frustration, we resurrected a little known procedure entitled, A Notice of Motion for Production of Papers, in addition to letters to the Minister. Thus far we have been frustrated. And this particular matter chronologically runs from June of 1974.

It is our opinion that there is no right to privacy on the part of an individual or corporation which is doing business with the government. A second illustration is the matter of the island airport. In April 1974, we learned of the existence of a committee meeting behind closed doors to review what was termed technical information as it applied to the Toronto Island Airport and its possible use for STOL service, a highly controversial situation. I hasten to point out that not all of the members serving on this committee had technical expertise.

We sought to have representation on that committee which was denied us. We further sought to have the right to citizen observer. It was denied. However, the committee resolved that its minutes be made available to us. We were somewhat shattered when minutes, or what purported to be minutes, were provided and when upon obtaining a copy of the official minutes, we discovered that there were significant variations in the two documents. The matter was referred to the Attorney General on the basis of a requested investigation into what we defined as the falsification of public documents. Not surprisingly the Minister found that the chairman of the committee had prepared a summary of the proceedings and it contained and I quote, "all the essential and basic points that were discussed". And the minister went on to say, "in creating this summary there was no attempt to distort the facts or mislead people as to the committee's considerations". It is interesting to note that among those matters deleted from our reported minutes were the numbers of passengers that might be expected to use the STOL airport, the identity of alternative airport sites, the full name of a provincial government study, and a statement regarding provincial policy toward the introduction of air service in southern Ontario.

Our experience with government information offices is similarly discouraging. Earlier this summer we asked for two reports from the Ministry of Health Communication Branch, one of them having to do with ambulance service and the other allegations of the Canadian Civil Liberties Association concerning improper detention of persons in mental hospitals. After two weeks of no reply, we asked the Minister in the House to produce this report. At first he was confused by the request - they always are. He then said that the ambulance report was a public document and he would be happy to send us a copy. He would like to look into the other request. Five weeks after the original request, a letter went to the Communications Branch on July 27th to remind them in specific terms of the request. To this date, the letter has not been answered, nor have we received the ambulance report from the Minister although we have received it in what is now becoming a familiar practice in Ontario, in a brown paper envelope, and I hasten to say from an unknown source.

So much for our problems with reference to freedom of information which in our opinion the people of the province are entitled to have.

It's interesting that the Premier of the province, as re-reported on page 510 of Hansard of July 7th, 1977, says,

"but my experience has been that there has been very little that hasn't been made public in one form or another".

All I can say is that this may be true if one searches the archives but hardly answers the present burning problems.

It has been suggested that the province of Ontario has taken a long step forward by creating the Office of the Ombudsman. This may well be true, so far as individuals are concerned. But recently, the flaws in the legislation itself became very evident and this relates to the question of the confidentiality of the Ombudsman's Office. For some time, the Select Committee wrestled with problems in the correctional institution's field, as a result of the report of the Ombudsman. These discussions were deferred because the Ombudsman was preparing a comprehensive report on the subject. It was with dismay that we read in the recent Ombudsman's report that he concluded that he could not introduce the comprehensive report either through the Speaker or the Committee, although the report has been received by the Ministry in question. This poses, it seems to me, a great difficulty and obviously ought to recommend the amendment of the legislation so that this can no longer take place.

I must try now to wind up to keep within my time. What should be in an act on freedom of information seems to me that it is clear that information as has been earlier suggested, must be provided unless there are very cogent reasons for not providing the information. And cogent reasons do not have anything to do with the protection of the party in power, the government itself - rather with such things as the security of the nation which I don't think really applies in Ontario, the privacy of an individual. But what we do see and what we must come to grips with is in Ontario the increasing view that almost anything that the government does not wish to make available by way of a report or otherwise falls within Cabinet confidentiality. And I think we do have to address ourselves in some way to just what is meant by Cabinet confidentiality. There's no question in my mind that all of us agree that an executive can't function without the opportunity of some private discussions. But certainly when they are extended as they are here, it creates grave problems. There is one worry I have about a freedom of information act and that is how you really secure information. I think we have to provide that all discussions save and except at the Cabinet level must be reduced to writing to ensure that information is fully available to the public.

I think I will close on that note and hope that there is some little time left for some further discussion. Thank you Mr. Chairman.

PANEL CHAIRMAN

JOHN TURNER

We'll give you I think an inside the wall triple on that, Margaret. We have some august clientele here. I say this to the panelists. We have the Ombudsman here. I'm going to ask any of them who would like to intervene at this stage to intervene. Panelists may or may not want to respond and anyone in the audience should feel free to intervene. I'm going to suggest, however, that we try now to bear down on the relationship between freedom of information and the role of the Ombudsman. The questions, some of which I raised earlier, which I have raised with the panelists are these. Perhaps there are others that you would like to canvass. Has the role and the function of the Ombudsman reduced the need for freedom of information legislation? I gather from our panelists their view would be no, we still need freedom of information legislation. Should the Ombudsman have greater access to government information than the public? If so, what information should be available to the Ombudsman that's not available to the ordinary citizen? What effect would freedom of information legislation have on the role and work load of the Ombudsman. The Ombudsmen themselves may have a view here. Should the Ombudsman's Office be open to freedom of information enquiries in the same way and to the same extent as government agencies and departments. Mr. Baldwin has said yes, the Office of the Ombudsman should be open and conferred by freedom of information legislation. I gather Mrs. Campbell takes the same view too. Mr. MacDonald hasn't addressed himself to that particular question yet. Should the courts have exclusive authority to adjudicate freedom of information exemption disputes? If not, who should do it? Should it be the Ombudsman? Mr. Baldwin favours the courts. I favour the courts. I remember Mr. MacDonald's view used to be that it should be perhaps a parliamentary officer. He hasn't spoken to that today. Finally, if the Ombudsman is not given authority to adjudicate freedom of information disputes, should he be given any special representative function under freedom of information legislation? Should he have a surrogate role? Should he be approached by citizens under freedom of information legislation to canvass the production of that information on behalf of the citizen? Mr. Baldwin has suggested that that is a useful role for the Ombudsman. I think it should be available to the citizen, my own view is, if the citizen wanted to use the vehicle of Ombudsman but the freedom of information legislation should allow the citizen direct access to information.

Well those are questions that come to mind, ladies and gentlemen, and since this is an Ombudsman's Conference, since we're asked by Mr. Maloney to be helpful, perhaps I could entertain questions or remarks by Ombudsmen at this stage. Mr. Peddle from Newfoundland.

AMBROSE PEDDLE

Yes Mr. Turner, I think it has to be borne in mind that our function, and this applies to all the Canadian Ombudsmen is as one where we formulate an opinion, and make a recommendation. Now if we were put into position of making a decision, an absolute decision on what information should be available, that would be at this point the only decision we would be able to make - always bearing in mind that we recommend only.

Now I was interested in something you said, Mr. Turner. I don't know if it was your idea or something you just threw out - the possibility of their being an appeal procedure against, as you termed it, the Ombudsman's decisions. I was just wondering bearing in mind that we don't send anybody to jail for 10 years or fine anybody or in effect actually order anybody to do anything, that we only formulate opinions and make recommendations, how would you perceive an appeal procedure against that sort of situation.

PANEL CHAIRMAN

JOHN TURNER

Well Mr. Peddle I agree with the absence of appeal under the present functions of the Ombudsman as it is found in provincial legislation for the reasons you suggest. But if the Ombudsman becomes involved in freedom of information adjudication as between government and a citizen, since that is an adversary position, then I would think that whoever handles that particular role should be subject to appeal. So that if the Ombudsman in my view wants to get into the freedom of information game as an adjudicator, not as an investigator, but as an adjudicator, then I would think in my view one would have to contemplate an appeal system.

AMBROSE PEDDLE

You mean making a decision on the question and that decision being binding.

PANEL CHAIRMAN

JOHN TURNER

That's right sir. Dr. Ivany is it?

RANDALL IVANY

Randall Ivany from Alberta. First of all let me say straightforwardly that I'm very much in favour of freedom of information. I think there are some real handicaps as far as our provincial acts are concerned at the present time. I think it must be said that many of the people who come to us as Ombudsmen now come to us because they know that what they are saying to us and what we are investigating on their behalf is going to be kept confidential. I think we would have to look very carefully at what that would do perhaps to the overall caseload. I think it can be overcome but it is a matter which should be given consideration.

One of the other things that must be said with regard to the present Act of the Ombudsman, the Provincial Ombudsman is the fact that we are not a discovery mechanism and we are not to be used as a discovery mechanism for solicitors or matters that can be taken to the courts. I think that's an important matter to be kept in mind. You've suggested, Mr. Turner, that the courts should adjudicate. They should resolve conflicts over the right of a citizen to know while not suggesting that the role should be handed to the Ombudsman. I wonder if there is not some benefit, however, to be gained if this responsibility is given to an Ombudsman, the fact that the Ombudsman is easily accessible to the average citizen and that the process - the court process - is very often known to be protracted and cumbersome and costly. The courts have been characterized often in this way, in comparison to the Ombudsman office.

PANEL CHAIRMAN

JOHN TURNER

That's a legitimate view. I was concerned about mingling the investigative role of the Ombudsman on behalf of the citizen with the adjudication role. It gets awfully complicated when the person who investigates turns himself into a person who reviews and adjudicates. But Mr. MacDonald and I were talking about this some time ago and I think he'd like to respond.

PANELIST

DONALD MacDonald

I didn't speak to the question the Chairman had posed to us all in my introductory remarks as to whether or not the Ombudsman's Office should be open to freedom of information on the same basis as any government department or agency. And I'm interested to learn that both of my colleagues on the panel apparently think that that is the case.

My instinctive reaction is yes, I'd like it to be the case, but certainly within the framework of existing statutes at the provincial level, particularly the one in Ontario I'm most familiar with. There are a couple of very serious obstacles. If you have an Act which has certain exempted categories, I must say I'm not certain whether or not the Ombudsman has the right to sort of move in on exempted categories and satisfy himself as to whether or not the exemption in this specific case, the information sought is legitimate. Because many acts give the executive the right to release information that may be in an exempted category. Or it is suggested that they should, because of a time lapse and things of that nature so that the reason for the reason for the exemption in that specific instance has really gone. I think an Ombudsman should - I'd be curious to know whether they really have - the right to look at exempted categories.

Does that mean that he gets information with regard to an exempted category and it gets into his files? And if it gets into his files, are his files open to everybody on a complete freedom of information basis? Or if there's a problem there, can it be met by having a double set of files, those that deal with exempted categories and those that deal with open categories and in the latter the public can come in if they wish?

However, that doesn't resolve the problem so that I could emotionally join my colleagues and say the Office should be open, because there's this very fundamental element of confidentiality. If the approach of a citizen to the Ombudsman carries with it the assurance that unless he wishes, the information to become public, it will remain confidential, then it seems to me that you've got to alter a pretty fundamental approach of the Ombudsman's Office before it can be open to freedom of information.

PANEL CHAIRMAN

JOHN TURNER

Mr. Maloney.

ARTHUR MALONEY

Mr. Chairman, you posed a number of questions you hoped the audience would address themselves to and I'll try to answer them in the order in which you presented them. First of all, like Dr. Ivany, I'm a great advocate of freedom of information legislation.

Your question then was - has the enactment of Ombudsman legislation reduced the need for freedom of information legisla-

tion? I say no - I agree with you. I don't think it's a substitute for freedom of information. I borrow the language of Mrs. Campbell. It was a first important significant step, but no more than that. And I think the advantage of the Ombudsman legislation has been to prove that, the fact the private information, that was hitherto sacrosanct can now become public, hasn't caused any great revolution. So it proves that it can be done.

Your next question - should the Ombudsman have greater access to information than the public? Well of course if freedom of information laws are passed then the public will have equal access to that information. That answers that question and I don't think the Ombudsman should be in any preferred position insofar as access to private information is concerned.

Your next question - what effect would it have on the Ombudsman workload? My own impression is that while we get some cases and Mrs. Campbell raised this question too - while we get some cases that are based purely on a lack of information on the part of the public and a desire to get it, the cases that fall into that category are not sufficiently large to enable me to say it would have any significant effect on our workload.

And then you ask, should the Ombudsman be open to freedom of information legislation himself? In Sweden of course the press go up every day and look over the files that were opened up the day before - every morning - and there's a long tradition in Sweden behind that policy and they wouldn't think of changing it. On the other hand, the only question I would raise - would it inhibit somebody in Ontario from coming to me with a complaint to know that the next day the news media would have access to what he or she had to say by way of criticism or by way of statement of his or her particular problem. I'm rather inclined to think that the majority of the people that we have had dealings with would feel embarrassed if they thought that what they had to say to us by way of complaint was going to reach the front pages of the press after they had come to us and that might appreciably diminish our workload if that change in the law were brought about.

Should the courts or should the Ombudsman be the remedy? And you and Mr. Baldwin, you in particular Mr. Chairman, take a strong view - it ought to be the courts. My view is it should be the Ombudsman because there isn't a total lack of right of review from a decision of the Ombudsman. Certainly in Ontario we have a Select Committee that has an obligation imposed upon it to review the reports of the Ombudsman including his annual report or specific interim reports or specific reports in individual cases, and I would construe that power to mean that even if the Ombudsman were to turn down a request for access to information this committee would have a right to review the Ombudsman's decision in that respect and to make

a recommendation to the legislature accordingly. So that you have a remedy by way of review from a decision of the Ombudsman, in my opinion. And in view of that, it seems to me that the cost of litigation, the probable need to retain legal counsel at considerable expense, the various remedies by way of appeal to higher courts would make for a less efficient, less expeditious disposition of the request for information from the citizen. So that I would be of the view, the Ombudsman rather than the courts would be the preferable remedy.

Now should the Ombudsman have a specific representative function, a surrogate function I think you asked Mr. Chairman. My view is no - because the Ombudsman, it seems to me if he is to be successful in the performance of his functions, has to maintain objectivity. And therefore if we had some sort of surrogate role to play on behalf of the citizen - unless we were entitled to take sides in court - as we saw fit in a particular case - either to justify the withholding of information by the Ministry on the one hand or on the other, support its production to the citizen in search of information, I would think we would lose our characteristic of objectivity. I think therefore we should remain aloof - that would be my view - from taking sides on the issue in any procedure that was devised to provide for an application to the court.

Having attempted to answer your questions rather hastily, could I just ask one question of my own to all of you. I wonder if any of you have given any thought to, and if you have, have you formed any views, on whether or not freedom of information legislation should be retroactive. Because what worries me is this - I'm sure there are government officials who were acting in very good faith but perhaps intemperately on occasions made entries on documents that they would shudder at the thought, cringe at the thought of them being made public. And if the legislation were to be enacted, will thought be given to whether or not it should be retroactive or whether it should apply only to requests for information that come from the date the legislation is enacted. Thank you Mr. Chairman.

PANELIST

DONALD MacDONALD

May I ask a question of Mr. Maloney for clarification. Assuming we have a freedom of information statute and it inevitably included exempted categories - I hope it's not an unfair question - I'll ask it anyway - would you envisage that the Ombudsman would have the right to examine exempted categories to come to the conclusion as to whether they're legitimately - that specific bit of information is legitimately continued in

the exempted category? And they presumably having got that information confidentially because it's in an exempted category would have to withhold it?

ARTHUR MALONEY

With the present state of the law, we are of the view that we have a right to review files that otherwise fall into exempted categories and the only restriction on our right to review them is if a certificate is issued by the Attorney General that we would be getting involved in the deliberations of the Cabinet or somehow or other impeding the investigation of offences. So that we therefore feel that under the present state of the Ombudsman legislation in Ontario, we do have a right to view files that would otherwise be subject to non-disclosure to the citizen. But I could see how in the federal domain, special legislation would have to be, or a special section would have to be enacted in any Freedom of Information Act so as not to impinge on national security and that sort of thing.

PANEL CHAIRMAN

JOHN TURNER

I would ask Mr. Baldwin to reply to the retroactive question - the question on retroactivity put by Mr. Maloney.

PANELIST

GERALD BALDWIN

Thank you Mr. Chairman. I would like to just make one brief comment on the other aspect raised by Mr. Maloney. In Sweden of course the Ombudsman does have a role with regard to freedom of information and occasionally does take a case to court, to the Supreme Administrative Tribunal. Now my view about a court would be that you would have to combine the role of the courts with the simple, summary and inexpensive procedure, maybe the same kind of procedure that the Supreme Administrative Tribunal in Sweden had adopted. I believe once there has been a jurisprudence built up, with some interpretation of the rules of exemptions, that there would be a very useful role for the Ombudsman with the machinery. I was most impressed going around this morning with the way your work has been divided with your groups and so on. I think all of us here who served politically, and others in the audience who have, know that at a certain level of the civil service you have certain opportunities to get information and once you establish those sometimes you can do so. I believe once the jurisprudence has been built,

that an individual who has failed at first instance to get the document could make most effective use of services which Ombudsman can supply through the process of an intermediary, very much what you do now in some ways, on some occasion to get that material, that information and maybe the advice as well to permit, if your requests are rejected to go on to the next stage of simple court procedure.

Now on the question of retroactivity, I think it has to be retroactive. I think once the bill gets put into the order paper in Ottawa, the shredders will get busy. There will be an enormous amount of activity in the shredding machines, but I don't think you can safely say we're starting from the day the legislation has passed as day one.

I had a case of a university professor coming in to see me just a few days ago who was writing a book, an academic work on the War Measures Act dating back to the Second World War, and he attempted indefatigably for several months to get information as to why certain organizations, church groups and so on were banned during that time when the activities of their organizations were suppressed. And he as much as told me in the course of our conversation that people in government said to him that there are some people still alive who are involved in this. Until they're dead there will be no opportunity for this information to be made available.

Now I would be opposed to retroactivity. I don't know how far you can go back. I think of the story of Hercules in the Aegean stables. There's a hundred years of accumulation piled up. But I don't know, I would on balance be very unhappy about making the legislation retrospective.

PANEL CHAIRMAN

JOHN TURNER

Inger Hansen.

INGER HANSEN

Mr. Chairman, in addressing your second question, whether the Ombudsman should have access to information that a citizen cannot get, I think particularly in the correctional field, you find that you often become the receiver of information that you cannot disclose. You are placed in an awkward position in that you have to say to the citizen, in this case the inmate, that I don't think you've been unfairly dealt with but unfortunately I cannot tell you why. It is a question of whether you trust

me or not. And in order to explain it, I'd like to give you two concrete examples and I hope you will disagree and I hope particularly Mrs. Campbell will respond to this.

An inmate applies for a temporary absence and you find in your investigation that he wishes to go to the home of his brother. His brother, at the time of the application is involved in crime which involves fencing material that the person is serving time for having stolen. Now if you were to disclose to the person why he cannot have a temporary absence, I think you would endanger society.

And the second one is one that I have great difficulty with and this is a concrete example. A man wishes to go home to visit his wife. The wife was at the time involved in a relationship of a sexual nature with another man. She had said to the social workers, I'm trying to break it off, please protect me. It's a touchy situation but I think you end up being the go-between.

PANEL CHAIRMAN

JOHN TURNER

Mrs. Campbell, you've been invited to make a comment. I think you had a question of your own.

PANELIST

MARGARET CAMPBELL

Well I had a question of Mr. Maloney. But in this particular case, surely in any freedom of information legislation, one has to protect such discussions of a confidential nature vis a vis the individual. It is the same thing which has applied in the thinking of this report of the Ombudsman. I think there is a difference, however, not having seen the report I can't discuss it. But I think there is a difference between a report, as it were, on correctional institutions per se and the divulging of information received on this very confidential basis that you're talking about. I suppose what we're going to have to look at is whether people in the Ombudsman's Office or in your office are going to be given the same type of privilege as prevails between solicitor and client. And of course I think most of us are very wary about enlarging privileges basically, but perhaps it's something that has to be discussed in the very nature of your operation.

May I address my question to Mr. Maloney. I would like so much to agree with the position of the Ontario Ombudsman insofar as placing upon the Ombudsman the ultimate duty, as it were, to determine a question such as freedom of information.

I notice that Mr. Baldwin, however, in his legislation has actually gone to the courts I think in great part because of their right to invoke a penalty. I have a dichotomy therefore. If your recommendation goes to the committee and all the committee can do is recommend, where do we end up in trying to put some teeth into a situation of getting the information. And I'd like to hear a solution to that.

ARTHUR MALONEY

Well of course you'd end up in my view of it in the ultimate court which is the highest court in the land, either the Parliament of Canada or the Legislature of the province. You would make a recommendation to the Legislature that this particular citizen was entitled to the information which the Ombudsman recommended he was not entitled to, or that he is entitled to the information that the Ombudsman recommended he was entitled to, and the Ministry denied him. And then the ultimate - the highest court in the land, or the province, then decides the issue.

PANEL CHAIRMAN

JOHN TURNER

Mr. Maloney though, I can see that working in a minority parliament. (laughter) How would it work if the legislature or parliament were controlled by the executive under a majority situation?

ARTHUR MALONEY

Well the Ombudsman as a functionary carries on usually in a situation in which there is a majority parliament because in the majority of jurisdictions in which we have an Ombudsman, the government of the day has a majority and in that situation it is usually the power of the news media that persuades the government what to tell its followers to do.

PANEL CHAIRMAN

JOHN TURNER

Yes Mr. MacDonald?

PANELIST

DONALD MacDONALD

I agree both with your philosophic background and the detail of your original presentation when we got going on this panel, except for this area of the third party adjudication when there's a refusal to provide information that's in an exempted category.

I would agree, as the Ontario Ombudsman has indicated, that the Ombudsman has a role here, particularly because he is digging out information anyway and therefore it seems to me that it's not foreign to his formal operation to adjudicate on whether or not certain information should be made available. However, that brings us to the problem that was raised by our Ombudsman from Newfoundland, and that is an Ombudsman can recommend, he can't instruct. But in our presentation, myself and my colleague, Pat Lawlor from Lakeshore, of private bills in the Ontario legislature, we came up with a resolution of that problem which I put forward for your consideration anyway. And that is if the Ombudsman makes a recommendation and there's still a refusal so that you have no finality, that then you might have appeal to the courts which can say one way or the other, yes the information will be made available or no it is legitimate that it can't. And I think in that kind of a two step procedure, you involve the Ombudsman who in my view has a legitimate involvement in it, and yet you have a final resolution out of the courts. And I don't think you would burden the courts because my guess is relatively few of the cases are going to go through to the courts. Indeed, if we would achieve, and I think Mr. Maloney would concede that that's something we have to work on in Ontario, a status of the Ombudsman's recommendation almost being law, or accepted as law as they are in Sweden, then you would have relatively few appeals to the courts. But in any case you would have that final appeal to get finality on the problem.

ARTHUR MALONEY

The only reply I make to that and I'm not sure I'm agreeing or disagreeing with you is that it represents a change in the traditional procedures, the traditional route that's followed from the Ombudsman's original recommendation, that traditional route being a recommendation to the Ministry. Failing there, a recommendation to the Premier. Failing there, a recommendation to the Legislature. In the case of Ontario that means to the Select Committee. Now you say that the Ombudsman procedure in this particular area of concern, the route from his original recommendation should take a different course. Maybe I'm a traditionalist and it's just that -

PANELIST

DONALD MacDONALD

But for the very reason that our Chairman put, it's not inconceivable that in a majority government you're going to get a decision by the Committee of the Legislature if you follow the procedure now laid down in the act which will reflect a quiet directive to the majority on the committee. At least if you go to the courts, you're going to a third party, presumably the agency that we normally rely on for adjudicating between private interests and public welfare.

ARTHUR MALONEY

Well that may be. I have really no strong views about it, although recalling my own parliamentary days, I remember that it was not uncommon for all hell to be raised in caucus.

PANEL CHAIRMAN

JOHN TURNER

I can only ask Mr. Baldwin to comment on that particular caucus of which you were a member. (laughter) And during the days Mr. Maloney was a member there was a hell of a lot of hell raised in caucus.

PANELIST

GERALD BALDWIN

The candle doesn't burn quite as brightly, not because you're gone, Mr. Maloney. But when I went into Ottawa first, we sat as a final court of appeal in Parliament dealing with divorce cases. And while I recall quite interesting to find that adultery as alleged to be practised in Quebec and Newfoundland might be a little different from the way it was practised in Alberta, we were faced with - you may recall this. I sat on the committee. We were faced -

PANEL CHAIRMAN

JOHN TURNER

That was a jurisdictional comment, that's all it was. (laughter)

PANELIST

GERALD BALDWIN

We have more energy in the west. (laughter)

COMMENT

A very private difference.

PANELIST

GERALD BALDWIN

But the problem is it may well be in the next world there's a perfect Parliament. It may be that Queen's Park is more perfect than Ottawa. I don't know. I leave it to my colleagues here. But it would seem to me that sitting in either Queen's Park or Ottawa or even Edmonton dealing with several hundred cases in a year would present some very, very, very difficult problems. It may well be that if we ever changed our Parliamentary system and allowed a small committee to hear and determine rapidly and for their decisions to be binding, you've destroyed the entire substance of the legislature. And for these practical reasons, I would just worry about it. It may work. I may be quite wrong - for one thing never having being in government I can admit I'm wrong - but I just believe that I'm not in this case. Now time may tell.

PANEL CHAIRMAN

JOHN TURNER

I think the issue has been well joined on the adjudicator except for one point that I'd like to bring to the attention and for comment by the Ombudsman if they choose or the panelists if they choose. The Secretary of State's paper obviously rejects judicial review - the tone of the paper does, and it calls for either a Parliamentary option or an information auditor along the lines of an Auditor General responsible to Parliament, or an information commissioner along the lines of the Language Commissioner, again responsible to Parliament and not the government.

Now what would you think of a Parliamentary Commissioner or a Legislative Commissioner rather than the courts for the Ombudsman? Are there any views about that? Mr. Baldwin.

PANELIST

GERALD BALDWIN

The trouble is - it may well be in Ontario, I don't know. The federal system where you might have to adjudicate in cases running from Cornerbrook to Komacks to Aklavik, should you not take justice closer to the applicants. I'm thinking of the courts or it may well be that the information Ombudsman might be varied as to his duties and have greater numbers to be able to do that. I would want to see, whoever it is, whether it's an information officer, whether it's Supreme Administrative Tribunal or a court, that it be independent and objective, with the decisions binding on both sides. And I would like to see it in a position where it can go to the applicant as close as possible rather than have the applicant come to Ottawa.

PANEL CHAIRMAN

JOHN TURNER

This of course is one difficulty that a federal Ombudsman, were he or she to be appointed would have a more difficult task than a provincial Ombudsman; the right of personal access to the Ombudsman I believe is very important so that we don't build up one bureaucracy sitting over another bureaucracy. In a country as large as Canada, that's going to be difficult.

But knowing the laws of Ontario and that refreshments can be served in ten minutes, I'm going to exercise the prerogative that was given to me and the instructions that were given to me by Ellen Adams to draw this panel to a close. I hope that the Ombudsmen canvass the subject in whatever way they see fit during the rest of the week. Although I have no right to draw any consensus, I would take it that there's a feeling among the panelists and among Ombudsmen that the role of the Ombudsman has not reduced the need for freedom of information legislation. That under freedom of information legislation, it might not be necessary for the Ombudsman to have any greater access to information than the ordinary citizen. And indeed the Ombudsman would be caught with the problem of the exemptions under that legislation and how to handle them, the point Mr. MacDonald was making. That one couldn't - one need not necessarily contemplate an overwhelmingly larger burden on the Ombudsman if freedom of information legislation were passed. That the question of whether the Ombudsman's Office should be open to freedom of information enquiries involves the problem that Mr. Ivany and Mr. Maloney, Mr. MacDonald dealt with, the confidentiality of the complaint or grievance brought to the Ombudsman which at the moment enhances his effectiveness. And the willingness of the citizen to approach the Ombudsman would be something that would have to be very carefully handled under freedom of information legislation as it affected the Ombudsman.

There's certainly no consensus at all as to who the adjudicator should be. The view has been expressed of the courts; another view for the Ombudsman. If the Ombudsman were to adjudicate and Mr. Maloney was skillful enough to withdraw the Ombudsman from the advocacy role, it would allow the citizen direct access under that freedom of information legislation. We didn't resolve that particular problem.

In any event these are two concepts that are bound to interact in the next 10 or 15 years in Canada if we make any progress at all on the freedom of information side. These are problems that will involve the operation of the jurisdiction of Ombudsman.

May I, before I turn the room back to Ellen Adams, thank Mr. Maloney for his invitation to me and to my co-panelists, to congratulate him on having assembled this non-appealable group, (laughter) in Toronto, to wish you and your guests continued fruitful discussions and wish you well in your very important office. Thank you Mrs. Campbell particularly. Thank you Mr. MacDonald and Jed and I turn the panel back to Miss Adams.

ELLEN ADAMS

This gives me an opportunity to say thank you very much to the panel chairman, the Honourable John Turner who really did an excellent job this morning chairing a very stimulating debate. And at the same time, I'd also like to thank the panelists once more. I think the debate could have run on for another half hour. In fact, just before Mr. Turner decided to sum up, I sent a little note over to Mr. Maloney and said how about letting it run on for another half hour but that note was too late.

I would like to thank everyone again for participating so well this morning and the meeting stands adjourned until 2:00. Thank you.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 13, 1977

Luncheon Address

Joseph E. Bérubé
Ombudsman of New Brunswick

RECEPTION AND LUNCHEON

CHAIR

DR. HARRY D. SMITH

Ombudsman of Nova Scotia

Ladies and gentlemen, could I ask you to direct your attention. It is my great pleasure as Ombudsman for the province of Nova Scotia to introduce my friend and colleague from my neighbouring province of New Brunswick, Joseph Edward Bérubé.

Judge Bérubé was born in Edmundston, New Brunswick, not many years ago. He attended Collège St-Joseph in Memramcook; L'Université d'Ottawa where he received his Bachelor of Arts degree and the University of New Brunswick where he received the Degree of Bachelor of Civil Law. He was admitted to the Bar of New Brunswick in 1957 and to the Bar of Ontario in 1958. He has practiced the law in Sarnia, Ontario; Grand Falls, New Brunswick; and Edmundston, New Brunswick. He was appointed judge of the provincial court of New Brunswick in 1965 and stayed there until 1976. Then he was elevated to the post of Ombudsman, to become the fourth Ombudsman for New Brunswick. Now in saying that I don't want to hurt the feelings of somebody at the table here who was a former Ombudsman from Saskatchewan. I don't mean to suggest that Ernie Boychuk was demoted, from Ombudsman to being a judge but we may have to strike a panel a little later on in the week to talk about that one.

Joseph Bérubé is past president of the New Brunswick Provincial Court Judges Association, a member of the Advisory Board of the International Bar Association as well as the New Brunswick Barrister Society. Ladies and gentlemen, Mesdames, Mesdemoiselles, et Messieurs, I present to you, je vous présente, Joseph Edward Bérubé.

ADDRESS

JOSEPH E. BERUBE

Ombudsman of New Brunswick

Mesdames et Messieurs. Puisque tous les gens ici présents comprennent l'anglais et que l'inverse n'est pas le cas, j'espère que personne ne soit offusqué si je fais ma présentation uniquement en anglais.

(Ladies and Gentlemen. Since all those of us present here understand English, and the converse is not the case, I hope that no one will be offended if I give my presentation entirely in English.)

Some months after being asked to contribute to this week's proceedings, and with no appropriate inspiration in sight, I noted in the Ontario Ombudsman's Second Report a recommendation that his jurisdiction be extended to municipal corporations of the Province. When the Nova Scotia legislation was passed in December 1970 it contained such a jurisdiction.

In New Brunswick, we have had such jurisdiction for over a year, and I believe it might be timely to share that experience with you, both in general terms, and with reference to a sample case, with a view to better understanding the nature of this power.

When the New Brunswick Legislature extended the Ombudsman's jurisdiction to municipalities, it did so by analogy; that is, it simply inserted the words "or of a municipality within the province" to existing sections which defined the term, "department or agency", and the powers and limitations pertaining to the Ombudsman, with respect to his review of the provincial administration. Thus, section 12(1) of the Act, which gave the Ombudsman power to investigate "the administration of any law of the Province by a department or agency or any officer thereof" was amended by addition of the words "or (b) the administration of any law of a municipality within the Province by a department or agency, or any officer thereof".

This analogous legislative extension is total. It extends to all formal aspects of the investigative process, including the provision of notices, the securing of evidence, the right to hold hearings, and the recommendation process.

There are naturally enough, certain theoretical obstacles to such a legislative approach; for example, most of the 112 municipal governments are small villages, with only the rudiments of a departmental structure. In fact, even the larger centres - Moncton, Fredericton and Saint John - lack departmental structures approaching the sophistication of those in the provincial administration. To meet this obstacle, the Office has approached each municipal corporation in the same manner as an individual government department - by initially contacting the City or Town Manager, or Village Clerk, and perhaps copying in a department head, in the same manner as one might a departmental divisional director.

A second obstacle presented by our legislative scheme is the absence of any mention of a municipal council in the

legislation. The Office has filled this vacuum, again, in a manner consistent with its review of the provincial administration; that is, by treating a council in the same manner as a Minister of the Crown, including a review of its activities, as they pertain to the administration of a municipal law, and with a view to making recommendations to it in the event of an unsatisfactory response from the manager or clerk level.

A third potential area of difficulty under our present legislative scheme relates to the presentation to Cabinet of a recommendation, and the making of a report to the Legislative Assembly while municipalities in New Brunswick are under the ultimate purview of the Cabinet and the Legislature, most specifically, by virtue of the Municipalities Act, RSNB 1973, c. M-22. It does appear likely, from a present-day viewpoint, that either of these bodies would interfere with a decision of municipal administration on a matter which, of necessity, it has already delegated to the municipal corporation. However, I believe it is accurate to say that such a step is taken with respect to the provincial sphere only in exceptional circumstances, and similar circumstances might warrant such a step vis-a-vis the municipal sphere.

There are other, what might be termed "stylistic" considerations, which must be met when one moves from the area of provincial to municipal oversight. Municipal government tends to be less professional, more personal, and, in spite of the growing number of municipal by-laws, subject to much less clearly-defined legal rules than the provincial administration. Consequently, the Ombudsman tends to find himself enforcing the general intent of his own legislation - ensuring fair and moral public administration - in instances where a stricter interpretation of his powers might preclude intervention.

There is an additional aspect of our municipal experience which is worthy of mention. Municipal police forces occupy a unique position within the general administrative framework, lodged somewhere in the vicinity of municipal employees, independent Crown officers, and, in the case of the R.C.M.P., Federal employees. From the date of assuming a municipal jurisdiction, our Office has treated this element as somewhat different. All complaints against municipal police forces are reviewed directly with the Chief of Police, or referred to the appropriate local Police Commission. I should add that, as soon as our new Police Act is proclaimed in its entirety, a Provincial Police Commission shall probably oust our first-level jurisdiction with respect to most complaints against police forces.

The case sample which I will discuss is, I believe, representative of our municipal experience. It is as follows: the complainant's wife, filled with patriotic zeal and emotion at the opportunity of catching a glimpse of Her Majesty during a Royal Tour of Fredericton, on July 15 last, had inadvertently parked her automobile in a restricted parking zone; the parking zone had been closed in order to afford a greater measure of security to the Royal Family. The complainant had heard a radio announcement of the closing of certain streets, and upon seeing his wife's automobile in the restricted area, decided to move it to another location. The complainant had just entered the vehicle when a city police officer told him not to move it, because a tow vehicle had already been called. An unseemly exchange ensued, followed by a rather hasty exit by the complainant. The police officer deemed the exit careless, and charged the complainant accordingly. At the same time, he located the automobile after it had been legally parked, and had it towed away - to a private garage - "to be used as evidence".

The complainant subsequently approached my Office for assistance, with respect to both his Court action and the towing fee for removal of his car.

I advised the complainant of my lack of jurisdiction with respect to his court action. I further advised him that I would be prepared to review the matter of the towing charge, following his Court appearance.

The complainant retained counsel, and following trial, was convicted of the charge of careless driving. The Judge's decision, based upon his ruling that "when it came to a question of credibility, he would find in favour of a police officer if testimony directly opposite to that given by the officer were given by the accused". I confess that I found this dictum rather interesting, especially in view of the fact that the police officer had quite obviously acted improperly in having the vehicle towed away to a private garage, when, to be of value as evidence, it should have been impounded. However, it was not within my jurisdiction to review this conclusion, and I so advised the complainant. At the same time, it was not at all clear that I should review the towing charge with the Chief of Police, as there is a Police Commission in Fredericton, of which one of the duties is to review complaints against the force. I should state my opinion that this role has been a rather closely-guarded secret in Fredericton, and, in any event, the Commission was experiencing considerable internal strife at that moment, arising out of the means of discharging one or more of its other public functions.

I, therefore, decided to review the matter directly with the Chief of Police. This response to my correspondence was positive; the Chief's response contained a clear admission of wrongdoing on the part of his officer, and the sum of \$22.00 in cash to cover the towing charges was forthcoming within a few weeks. I was tempted to pursue the matter of disciplinary procedures against the officer in question; however, in view of the peculiar circumstances of the incident, the Office's tenuous jurisdiction, and the novelty of our experience in this subject-matter area, I did not recommend a particular follow-up by the police in the matter. Rather, I expressed my belief that, based on the full response received from the Chief to that date, disciplinary action would be taken if it were deemed necessary. In addition, I forwarded to him an excerpt from the Third Annual Report of the Fiji Ombudsman, wherein that worthy gentleman explained how one police constable was ordered to pay compensation to a citizen, in circumstances which were similar to the local case. Having already satisfied myself that the complainant was satisfied with the response obtained from the Office, I then proceeded to close the file.

The foregoing case is representative of a large number of cases before our Office, involving issues of minor pecuniary but major moral values, where the most important result of intervention by the Ombudsman is the maintenance of a desired level of confidence in the system of government. I believe this conclusion is equally applicable to both our municipal and provincial experience. Municipal governments, in my Province, are entrusted, to an unprecedented, ever-increasing extent, with power to regulate the public welfare. The extension of the Ombudsman's jurisdiction to municipal government was seen as one means of ensuring that this power was exercised in a just manner. It is my opinion, based on some fifteen months' experience, that this was a correct decision, and that municipal government is an appropriate area of concern for both the Ombudsman function, and more particularly, for the provincial Ombudsman's Office.

Thank you.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 13, 1977

Afternoon Session

"THE OMBUDSMAN AND THE LEGISLATURE"

CONFERENCE IS BROUGHT TO ORDER

COLONEL JOHN P. PAGE, E.D., C.D.
Director, Queen's Park Office
Ombudsman of Ontario

Ladies and gentlemen, my name is John Page. I'm your Conference Chairman this afternoon.

I shall now call upon Sir Barnett Cocks, the Panel Chairman to carry on.

PANEL CHAIRMAN

SIR BARNETT COCKS, K.C.B., O.B.E.
Former Clerk of the House of Commons
Westminster, London, England

Mr. Chairman, Colonel John Page, before we begin, and even before I introduce the panel, I must say a word about my relationship with Colonel John Page. He was in the Canadian Forces which came to Britain and virtually saved my life in this way. The flying bombs which the Germans had put up along the coast of Normandy and Calais, in the Calais area were aimed at Westminster, and those of you who were of mature age remember that the flying bombs coming over had a built-in engine which stopped just above the heads of the citizens of London. And one day I came out from the Palace of Westminster where even in those days I was working, and I heard one of these flying bombs coming overhead and the engine stopped, which means the bomb which was of course unmanned, swoops down. And any citizen standing upright would be blasted off the face of the earth. Well I remember the engine of the flying bomb stopping, and my last thoughts as I prostrated myself in the gutter were - where the hell is the Canadian Division - because it was Colonel John Page whose planning enabled the Canadian Division to fight its way up the coast of Normandy and the coast of Calais, and over-run the bomb sites which the Germans had set up to launch the flying bombs. Whenever I meet or hear of a Canadian who had responsibility for the Canadian Division in France in those far-off days, I am very grateful and I never fail to acknowledge my personal debt to those Canadians who came over to fight for us, and thank you Colonel Page for your planning which enabled me to live happily ever after.

Now then we have come this afternoon to the most distinguished panel, apart from myself of course. On my left is the Honourable Justice Clement of the Supreme Court of Appeal in the richest and greatest province of Canada, next of course to the one

we're in at the minute. And somebody said the other day, he varies his praise depending on which province he's in at the time. If I was in Alberta I would leave out the qualification - the richest province in Canada. But next to the distinguished judge, we have Mr. Stephen Lewis, the Leader of the New Democratic Party in the Province of Ontario. Mr. Lewis' name is very well known to us in England. We follow the leadership of each party in every province of Canada with great interest. I think our press keeps us very alert on matters affecting Canada because of course most of our fortune is derived from our association with Canada. On my other hand sits Mr. Gérard Lévesque, Leader of the Opposition in the Province of Quebec, and that is a province not unknown to us in Britain. We had in the past some struggles on the Heights of Abraham, and I well remember my meeting with one of the distinguished citizens of Quebec who apologized as he pointed to a portrait over the fireplace, and said - I'm afraid it's Montcalm, it ought to be Wolfe. That was Mr. Speaker Lamoureaux whom I met in Ottawa. Then beyond him is, well a man I would approach with very great timidity because he's Mr. Norman Webster the Legislative Journalist of the Globe and Mail, Toronto. My daughter is a distinguished member of the press in London and I approach her with great timidity but she's been working as a journalist for years. They are the most perceptive and powerful people on earth. And I've only kept a good reputation in my parliamentary field by keeping very much on the weather-side of journalists; never offend them, always be scrupulously courteous, bow at the knee when you see them coming. And believe me, in London in the Palace of Westminster, the House of Parliament you will see ministers standing to attention and journalists sitting back with folded arms saying - tell me Minister in confidence and so on. And then of course you read the report next morning. I was very interested today in the very brilliant panel discussion we heard on the freedom of information, because in the Parliament at Westminster we have about 200 journalists who move from room to room. Our Prime Minister in despair used to say - this is a terrible building. I cannot say anything to Cabinet in strictest confidence without the journalists knowing what has been said. And of course it wasn't - the Parliament rooms are not bugged by secret apparatus as our recent Prime Minister, Sir Harold Wilson alleged. It is just brilliant deduction by the journalists who are virtual thought-readers. I'm not joking, I'm serious. They will ascertain by their own knowledge the decisions which are likely to be taken by Ministers. And when you read in the daily newspaper the decisions which are being taken by Ministers, it is because the journalists are absolutely on top of their job. They know what is likely to be decided. So as I say, one approaches these distinguished members of the press with very great caution. It's a great honour that Mr. Webster has come here today to join this panel and I'm quite overwhelmed with the honour I've been given to chair them.

Now the subject this afternoon is "The Ombudsman and the Legislature". I wrote some preliminary remarks on this subject in England before I came here and I must say frankly that after yesterday evening when I had the pleasure of meeting the Select Committee from your Legislature here in Ontario, my whole theme has had to be drastically modified, because all the thoughts which I thought were my own have already been anticipated in the two very lucid and well written reports by the Select Committee which we were handed at a late hour last night. As soon as I started to read these two reports in the early dawn hours, I saw that most of my thoughts had already been put into the first or second report of the Select Committee on the Ombudsman.

It is clearly, I think, accepted now throughout the world that the relationship between the Legislature and the Ombudsman has to be clearly established and understood in the very early days of the Ombudsman's office/institution. Parliament has always been jealous of course of any new institution and it has been particularly weary certainly in Britain about the scope of the Ombudsman's work and the extent to which it would impinge or take away from the privileges of Parliament and the responsibility of Members towards their constituents. And I think that early suspicion has been gradually dispelled largely owing to the work of the Select Committee at Westminster which is a very excellent body of eight men and the work also here in Ontario, almost parallel work of your Select Committee on the Ombudsman, formerly consisting of eight members and now consisting of ten members. And the suspicion of one institution in some way challenging the other, is gradually and happily being dispelled. Therefore, I am sure this Conference, inviting as it has, the members of the Select Committee and the Select Committee inviting as they did, yesterday, the members of the Conference, have on each side done a great deal to promote a very friendly, co-operative and helpful atmosphere between the Ombudsman and his staff on the one hand and the Legislature and their staff on the other.

As a former clerk of parliamentary service, I would like to commend my colleague or my former colleague who has assisted your Select Committee so ably in the preparation of the report, Mr. Alex McFedries. I hope he is here, listening to me, because I only mention his name in the hope of getting loud applause at the end of my address at least from him.

It is I think an important topic we have this afternoon. I said yesterday, I am quoting what I said yesterday, between Parliament and the Ombudsman, there must be a partnership in the sense that each institution is there to represent the people.

Whenever the representatives falter, I said, the Ombudsmen must come in to assist their constituents and themselves, and we hope to hear from the members on this panel their feeling about their relationship between the constituents and themselves and their determination on the extent of which the Ombudsman can take over the work of constituent complaints and so forth.

This is a field on which we would very much welcome their views and the use they make of the Ombudsman's service, and the extent to which constituents allow themselves, so to speak, to be handed over to the Ombudsman when they make complaints. Whether they resent in any way being handed to another institution. The extent of which they accept that the relationship between themselves and the members has been varied or may be varied in the future.

These two institutions, the Legislature and the Ombudsman, can only work together if there is harmony between them. And I think the reason why the Ontario Ombudsman has been so successful is because he has understood the need for harmony but he is also being resilient in maintaining his own field of operation against any incursions by the Legislature upon his independence and particularly upon his control of staff. For this is surely the whole basis of an institution.

A few years back I had a hand in setting up some of the new parliamentary bodies overseas such as the Council of Europe. Their first concern was to establish the independence from government control of their members and the chief executives who serve the Assembly. This independence of the Legislature and its staff and the independence of the Ombudsman and his staff ought to be recognized as essential if the rights of the citizens ought to be preserved in what we regard as parliamentary democracies.

I know the Chief Executive of the French Parliament as well as I know the Chief Executive of the Indian Parliament and these two were under the authority of their Parliament, so strong in their office, that neither General De Gaulle in France nor Mrs. Ghandi in India were able to undermine them in their service of their assemblies. And it was very greatly the result of their strong independent position that has resulted in the maintenance of the parliamentary institution in France and the parliamentary institution in India against all prophecies of reduction in authority. The National Assembly in Paris is as authoritative as it ever was in spite of De Gaulle's views on the futility of much of Parliament's work. And equally in India, of course, Mrs. Ghandi was to reform the whole parliamentary system and got some way but fortunately as democrats we think the parliamentary system in India was strong enough to resist the incursions of the executive.

I think in Ontario all these thoughts about independence of the Legislature are certainly unnecessary because I know of course the Speaker here and Mr. Roderick Lewis whom we met yesterday, and they operate a fully independent service. In the institution of Ontario, the Parliament is absolutely independent. But recently I had the opportunity of comparing some other legislatures in Canada with those of Ottawa and of Ontario and I am now going to be controversial I am afraid. I can think of three provinces in Canada, or may be more, where the Legislature is virtually without independence since its services commenced, evidently to the extent thought expedient by the government of the day. The authority of Parliament in these provinces means the authority of Government, and of course if the Government is in charge of the staff, the institution itself can hardly claim to be independent in the parliamentary sense.

In two cases, I know, the Premier of the day, inquired what steps might assist in strengthening the authority of the Speaker and the Legislature. In those two Parliaments several proposals were put forward, all were rejected. The Premier and not the Speaker were in control. Which are these provinces? Certainly not Quebec. These other provinces I would not name because I would be breaking the confidences of Canadian friends. They are not provinces to be indicted as weak but rather as somnolent. In Canada as in elsewhere, the price of liberty is eternal vigilance. It is up to all of us to keep awake - unlike our Minister of Defence in Britain who apologized to the Queen, if you remember, for falling asleep during the jubilee review of the Royal Air Force while the jets thundered overhead. How a minister could have slept in such circumstances, only the press would know because they photographed him in deep sleep sitting beside the Queen who was fully awake as always watching the Royal Air Force.

I hope I've now been sufficiently controversial to promote discussion which is our purpose this afternoon. I was delighted to see in the Ombudsman's Office in his building here this morning when we visited it in his absence, the following slogan in a little plaque on his desk: "To avoid criticism, say nothing, do nothing, be nothing." Quite clearly the Ombudsman of Ontario hasn't followed that advice to avoid criticism, to say nothing, to do nothing, to be nothing. He has obviously done the opposite and therefore under the shelter of his protection, I have been dangerously critical or controversial and it's only because I have an honourable judge here to protect me that I went as far as I did. And therefore I think I would call upon the Honourable Member Mr. Gérard Lévesque to speak first on this theme.

PANELIST

GERARD D. LEVESQUE, M.N.A.
Leader of the Opposition
Province of Québec

Je vous remercie Monsieur le Président. Vous me permettez, avant de vous adresser les quelques mots que j'avais prévus pour les circonstances, de vous dire le plaisir que je ressens d'être ici aujourd'hui à Toronto rencontrant, particulièrement et précisément, ceux qui assurent davantage les libres exercices de nos libertés fondamentales de citoyens.

(Thank you Mr. Chairman. Before I deliver the few words of address that I have prepared for the occasion, permit me to express my great pleasure at being here today in Toronto to meet, in particular, those who further ensure the free exercise of our basic freedom as citizens.)

Mr. Chairman, there is obviously no need for me to make an elaborate speech to justify the indispensable character of the Ombudsman Institution. We are already all convinced of that.

It is certainly the considerable increase in state-controlled powers which has prompted modern society to seek a way to better protect the citizen against the power and omnipresence of the state's administrative machine.

We all know that the state decides and regulates a great deal for and on behalf of citizens, and in doing so, sometimes goes against the fundamental rights of individuals.

This is the problem which worries the community as a whole and a question which interests me greatly, since I have been the representative in the National Assembly for over twenty years of citizens in the County of Bonaventure in the Gaspé area.

The Ombudsman institution came into being in Quebec in 1968 with a view to correcting the wrongs suffered by citizens as the result of unfair treatment by civil servants in the performance of their duties, or when the procedure followed by members of a government organization in the performance of their quasi-judicial duties is tainted by some serious irregularity, and justice was not or cannot be rendered.

The authority of the Ombudsman institution in Quebec is established entirely at the level of the public administration, the National Assembly and public opinion in general. Thus, for example in 1976, the Public Protector referred some 4,234 recommendations to the administration and 4,116 of these recommendations were followed-up, a proportion of about 97%.

What we must reflect on today is the relationship which exists between the Ombudsman and the National Assembly.

We could, of course, endeavour to look at the problem in a purely descriptive and operational perspective, but I doubt if we would get anywhere, because it is obvious that the question at hand is fundamentally a political question.

It is, in fact, a political choice which the Assembly makes when it decides to create the Ombudsman Institution. The Assembly thus makes a valuable judgment towards the defense of individual rights and decides to exercise a control over the actions of the public administration in terms of the rights and freedoms of citizens.

Controlling in this manner the administration's behaviour by siding in advance with the citizens, is obviously a deliberate and determined political choice.

The Assembly and the Ombudsman are naturally meant to be in agreement in so far as both exercise a duty of surveillance and control over the public administration.

How can they have a closer relationship? Or how can they succeed in having a plan of action that would better protect the citizens against the public administration. That is the question.

In Quebec, the Members of the National Assembly have never regarded the Ombudsman as being an institution which would limit their responsibilities towards their constituents. On the contrary, a number of members who, after having repeatedly appealed to a department concerning a problem on behalf of a constituent, have, on their own initiative, referred the case to the Ombudsman. This is a current practice and altogether normal. Citizens who have a problem will quite naturally address themselves to their Member and I fail to see why he would deprive himself of the Ombudsman's services to help him rectify the legitimate complaints of his constituents. Moreover, in his fifth annual report in 1973, the Public Protector himself, Mr. Marceau, recognized the complementary character of the role of the Members and the Ombudsman when he wrote the following:

"We would be at a loss to minimize the role of the Members who, by their individual prestige or their authority as Members of the National Assembly, are in a position to reverse many of the administration's blunders."

We could perhaps consider improving the cooperation between the Members and the Ombudsman. I do not believe, however, that it would be desirable to involve the Members in any way whatsoever in the complaints which are submitted to the Ombudsman and, even

less, in the exercise of the powers of investigation and the recommendations which are delegated to him.

The Ombudsman institution has a significance which is proper to it and one should respect the principle of the independence of the Public Protector.

The respect of this same principle must also guide us when it comes to defining the link between the Assembly and the Ombudsman.

Since the decision to create the Ombudsman institution belongs to the National Assembly, the latter should consequently be the first to respect its own decision by allowing the Ombudsman complete autonomy in the fulfillment of his duties. Which is to say that the Assembly should not unduly intervene in the accomplishment of duties which it has itself attributed to the Public Protector.

Let us not forget either that the Ombudsman's recommendations are not directed to the National Assembly as such, but rather to the public administration which is requested to correct the particular wrong suffered by the citizens in question.

The Ombudsman must of course submit an annual report to the National Assembly. However, one must not misjudge the motive of this report which is essentially to provide the Assembly with information giving an overall picture of the role of the Ombudsman and to exercise secondary but necessary pressure on the administration when it is apparent that a particular governmental department has been negligent or has shown a lack of cooperation and this is illustrated by the number or importance of the complaints that the Ombudsman has received during a given year.

It does not, therefore, appear to me to be the appropriate time for the Assembly to set up a Select Committee on the Ombudsman to study this report. Firstly, because then the Assembly could be brought to substitute for the Ombudsman by examining the particular cases itself and setting itself up as a Court of Appeal for the decisions of the Ombudsman. This is not the role of the Assembly and it must therefore respect its own decision and leave the Ombudsman to assume independently the responsibility that is rightfully his. Secondly, because the Assembly has other means at its disposal to call the attention of the public administration to the remarks which are contained in the Ombudsman's report. These means are those provided for in the Assembly Regulations i.e. the oral question period, the tabling of motions and, particularly, the numerous hours which are dedicated to the study of the budgetary estimates of each governmental department. In this way, the Assembly has everything it needs to exert any necessary pressure on the Administration to induce it to follow-up on the Ombudsman's recommendations.

In his second annual report in 1970, the Quebec Ombudsman, Mr. Marceau, expressed a point of view which meets mine when he wrote the following:

"It appears to me, in fact, as I refer to the Ombudsman concept itself and the spirit of the law, that this report could do more than simply give an account of my activities and that it is perhaps possible to prepare it in a way that would help the Assembly play a role of surveillance over the administration which is indeed its role in our political system."

and he stated the following question directly:

"Even if the duties of the Ombudsman are carried out within a limited framework according to his particular concerns, they could also serve to provide a general picture of the relationship between the government and the governed and thus constitute, among others, a sort of working document for the use of the Assembly?"

This is the way that I personally see the relationship which should exist between the Assembly and the Ombudsman. As to the preservation of individual rights with regard to the Administration, their respective tasks are fundamentally complementary and, both the Assembly and the Ombudsman must strictly adhere to their respective mandates.

In conclusion, I should like to stress the prime importance for our modern democracies to concern themselves with ever-improving the protection of the rights of citizens and, in this perspective, it is obvious that every effort to strengthen the Ombudsman Institution is a step in the right direction.

In the same way, we must strive to continue our efforts towards improving the efficiency of the surveillance and control over the administration by the elected Members and, in general, the means to ensure adequate protection of human rights and freedoms.

Over the past years, Quebec has made some particularly significant gestures in this perspective: in 1968, the first Ombudsman took up his duties. In 1973, the National Assembly regulations were completely revamped in view of strengthening the authority and the efficiency of the National Assembly. In 1975, the Assembly voted the first Charter of Human Rights and Freedoms and set up a Commission of Human Rights and Freedoms.

Quebec is especially proud of having made such significant progress towards the defense and promotion of the rights of

citizens faced with ever-increasing invasion by the public administration.

My political party's prime concern is the "Quebec of Freedoms". It is now up to the Quebecers to make it a living reality while at the same time enriching their own experience with that of other provinces.

PANEL CHAIRMAN

SIR BARNETT COCKS

Mr. Gérard Lévesque you have not disappointed this conference by putting in a new controversial aspect. I thought we were all agreed the best solution of the relationship between the Legislature and the Ombudsman was the establishment of a Select Committee, and as I spent a lot of my address praising the Select Committee system and how it links with the Ombudsman institution, you have now torpedoed the argument by saying that a Select Committee is not necessary. Now I do welcome this because the more controversy the more life, the more excitement and although we will come to blows, they will only be, I assure you, verbal ones. But it's good, Mr. Lévesque, that you have given us some new thoughts in your address. I welcome what you've said and I must assure you that my admiration for Quebec and for your system is such that I am leaving Ontario on Saturday by train to pay my first visit to your city. We have seen several parts of Canada, and in your presence, whispering without anyone else listening, we have left the best to the last.

Now we turn to, we hope, a judicious and judicial comment on our little argument from the Honourable Mr. Justice Carleton Clement who is sitting on my left. He is, as you know, from the Supreme Court in Alberta and I've already commented on the influence that Alberta has on our affairs. Certainly, from the financial angle, but now I hope, Mr. Justice Clement, we will hear some more judicial pronouncement on the situation in Alberta and how you see the relationship of Alberta's Ombudsman with Alberta's Parliament. Mr. Justice Clement.

PANELIST

THE HONOURABLE MR. JUSTICE C. W. CLEMENT
Supreme Court of Appeal Division
Province of Alberta

Thank you, Sir Barnett. I'm sure you will find some elements of the judicial in the few remarks I have to make at the time at my

disposal because I find that I have sided with you in respect of the Select Committee, and it was with that in mind in advance which I propose saying a few words to promote discussion as to whether it would be of an advantage in any way to have a Standing Select Committee of the Legislature with whom the Ombudsman could communicate in an informal way as might be required during the course of the year.

The subject for discussion this afternoon, the Ombudsman and the Legislature, has various aspects. One which I would like to raise is whether it would be of advantage in any way to have a Standing Select Committee of the Legislature with whom the Ombudsman could communicate in an informal way as occasion might require throughout the year.

Under the present concepts of the function of an Ombudsman, there must be a continuing relationship between him and his employer, the Legislature, a body with many heads all of which do not think alike. He has independence in some areas - investigation, judgment, conciliation, reporting, and resort to the media. But he has no effective power of direct intervention for the enforcement of his decisions. An important example would be the reform of defects in the administrative apparatus for which the Government is responsible. The Ombudsman can only report, and I do not think he will be given an independent power to effect administrative reform or to enforce decisions, at least for the foreseeable future. Thus, in the end the effectiveness of his work is dependent in some measure on his relationship with the Legislature, and it may be timely to consider how that relationship can be satisfactorily maintained.

Again, as it was last year, I can speak only as a bystander with a sympathetic interest in the development of a new area of the administration of justice. I deem it to be a very considerable honour to take some part in a conference of Canadian Ombudsmen whose growing experience in exercising their statutory functions must provide the main basis for useful discussion and forward-looking direction. Experience is a great teacher. Each jurisdiction has, of course, its own milieu which shapes the development of its own institutions, but the experiences of others, properly taken into consideration, can be helpful and has the advantage of lessons learned without personal agonizing. Ontario has appointed a Select Committee but I am not informed what its duties are. I am sure the effect of this Committee on the relationship of the Ombudsman with the Legislature, and on the course of his work, will be a matter of continuing interest and observation. Sir Barnett Cocks has referred to the Select Committee of the House of Commons and I gather there is a useful lesson to be learned there, also.

The Ombudsman is appointed by the Legislature as its officer commissioned to investigate complaints relating to matters of governmental administration. His jurisdiction extends to forming

an opinion or judgment as to whether or not the decision, act, or omission complained of offends any or all of the number of concepts which the Legislature has, for example by Section 20 of The Ombudsman Act of Alberta, established as basic to securing justice in administrative matters. When he has formed the judgment or opinion that the decision or act or omission which he is investigating was wrong, the statute imposes on the Ombudsman a duty to report to the Minister concerned, with recommendations. I take it that this is the remedial step which Dr. Ivany describes in his 1976 Annual Report to the Legislature as "negotiations." It is to be observed in his report that in some cases the negotiations were only partially productive, and in one case of considerable urgency and importance he was unable to obtain any redress either by negotiation with the Minister concerned or through reporting to the Lieutenant Governor in Council. He felt obliged to make his report public as he was entitled to do. The matter has now been tabled in the Legislature but no opportunity of debate has yet been provided. In the light of this situation what I have to say hereafter does not stand on an entirely hypothetical basis.

If negotiations fail, the statute permits the Ombudsman to report, with recommendations, to the Lieutenant Governor in Council which is to say the Executive Committee of the Government and in which the Minister concerned will have a voice; and thereafter to report to the Legislature. This discretionary special report is additional to the prescribed annual report. He is also required in any case to inform the complainant of the outcome of the investigation.

The statute leaves it at that. The officer of the Legislature reports to it in writing. There is no provision for meeting or discussions by the Legislature with its officer. The Ombudsman may be summoned to the Assembly by Mr. Speaker, but that would occur, I would think, only when some controversy has arisen on the floor of the House over his report, or some part of it. Political advantage is seldom absent from the motives which raise controversy in a political institution. Thus the door is open for politics to enter what is basically intended to be the domain of natural justice and administrative reform. To summon the Ombudsman to take part could well be inimical to his relationship with the Legislature or some of its members. Mr. Weir yesterday emphasized the need for advocacy by an Ombudsman, but this function is part of the adversary system and is not a happy situation for an employer and employee to be in. Further than that, these provisions that I am discussing can operate unevenly.

Let us suppose that the Ombudsman has made an investigation of a complaint and has informed the complainant that he has concluded there was nothing wrong with the decision or act or omission on which the complaint was grounded. Let us say that the complainant strongly disagrees. He is of the view that the Ombudsman has

completely missed or failed to appreciate significance of an important factor in the case. Be that as it may, his case has come to an end: as far as the statute is concerned its future is only as a statistic in the Ombudsman's annual report. The case will not come to the attention of the Legislature unless a private member brings it up, and this might well involve public criticism of the Ombudsman in a political area, which might well put him at a disadvantage.

When you consider the other side of the coin, to which I will come shortly, this may seem like short shrift for the complainant for whose benefit the statute was enacted. It would appear that the statute takes as its premise that the Ombudsman can't be wrong when he finds against a citizen, although he can be wrong if he finds against the bureaucracy. This is a somewhat startling proposition to deduce from a statute intended for the protection of the citizen against the bureaucracy. Perhaps it is just a matter of expediency. If the Ombudsman can't see anything wrong, that is enough, the bureaucracy is not to be troubled further.

Things are different in the other area of the administration of justice, the courts. There, the Legislatures of the land have taken the view that even judges can be wrong. They have provided for an appeal from a single judge to a court of appeal of three or more judges. They have gone so far as to stretch this view to the point of assuming that even a court of appeal can be wrong sometimes, and have provided for an appeal to the Supreme Court of Canada which sits with not less than five judges. All good things must come to an end, and the Supreme Court of Canada is the end of the line for the litigant. By that time his case has been fully reviewed and considered by not less than nine impartial judges. If one were to project this concept into The Ombudsman Act, one might suggest that such a complainant be afforded an opportunity to review his case with a non-partisan Standing Select Committee. Certainly this course would be more judicial than having it brought up on the floor of the House by a private member, as has happened here.

More important to the relationship between the Ombudsman and the Legislature would be an adverse report, with recommendations, to the Legislature, such as I have noted above. Let us say that in his opinion a complaint is justified, that there has been an administrative decision or act or omission that is wrong, and the Minister concerned has remained obdurate for whatever reason. He has refused rectification and declined to alter the departmental procedures out of which the complaint arose. The matter appears in the annual report which is tabled in the Legislature. What then? The statute is silent. We may easily suppose that a member of the Opposition will notice this unfortunate case that I have postulated. He may move in the Legislature that the report be debated, with particular reference to this case. The motion may be denied, or accepted. If it is accepted, the Ombudsman may

be summoned by Mr. Speaker. The Minister seeks to justify his intransigence. The Ombudsman may be driven to a defensive position on the floor of the Legislature, or in committee of the whole. I do not think an Ombudsman should be summoned to answer in such a milieu, nor do I think that is a particularly appropriate forum for the task in hand. Here, too, it would appear to me that a non-partisan select committee of the Legislature could carry on in the way which Dr. Ivany reports as most effective - negotiation. On the floor of the House, the adversary system is certainly inclined to prevail. As is pointed out by Paul R. Verkuil in his article in Columbia Law Review, Volume 75, Page 845, the adversary system has little place in the discharge of the duties of an Ombudsman.

The foregoing is only one area in which I suggest that a Standing Select Committee of a non-partisan nature could perform a useful function. Others will come to mind. Publicizing the Office as mentioned by Professor Friedman is one. Matters concerned with the expansion of the Ombudsman plan to meet the increasing needs of the public is another, having in mind particularly the wide-ranging jurisdictions foreseen by Sir Barnett Cocks. The Legislative Assembly of Alberta appointed a Select Committee to consider the enlargement of the jurisdiction of the Ombudsman in respect of municipal matters and conferred with Dr. Ivany in the course of its deliberations. I would think a Select Committee would be a more suitable means of a useful exchange of views, than would discussions with the Legislature sitting in committee of the whole.

PANEL CHAIRMAN

SIR BARNETT COCKS

I'm sure we're all very indebted to Mr. Justice Clement for elucidating the situation in his province and also for indicating to us the complexity and the interaction between the judicial, the executive, and the legislative or parliamentary function. And now the additional complication in the constitutional sense of the Ombudsman function. It is a completely new field for the constitutional lawyer. And we remember Montesquieu in the 18th century trying to interpret in his famous Spirit of the Laws how the judiciary, the executive and the legislative work of a parliament was separated or interwoven. And the founding fathers of that great country to the south of here, United States, we were taught in school, got it all wrong because Montesquieu, on whom they founded their wisdom, didn't understand the brilliance of the British system. I'm sure that was a grossly prejudiced misinterpretation which was taught us at school and it has been vehemently denied by my constitutional friends in the United States who point out the greater superiority of the constitution which their founding fathers laid down so happily in was it in 17-,
- I better not give the date, but at any rate in the 18th century.

Thank you Mr. Justice Clement. Now as temporary captain of the panel, I will tell you the cricket principle. They put into bat the two brilliant batsmen. They're called the openers, but they hold back the two men on whom the match will stand or fall. They are put into bat third and fourth. We've had two brilliant openers - Mr. Lévesque on my right and Mr. Justice Clement on my left. And now inevitably, we have the next two in this happy team on whom the match, the argument, will stand or fall. I now call therefore on Mr. Stephen Lewis, Leader of the New Democratic Party, Member for Scarborough in this province of Ontario. Mr. Lewis.

PANELIST

STEPHEN H. LEWIS, M.P.P.
Leader of the New Democratic Party
Province of Ontario

Alas, Sir Barnett, I play cricket only once a week and I'm therefore not entirely attuned to the challenge which you discharge. I'm pleased to share this panel especially with Gerard Lévesque who inspires a certain awe in me for his tenure alone. I have thought to myself that if my 14 years in the Legislature borders on splendid longevity, your 44 verges on immortality, and I prostrate myself accordingly.

I have an umbrella for these remarks which I hope will be relatively brief, largely I think shared by a number of people in this room. I have had, from its inception and even prior, a certain uncritical acceptance of the Ombudsman's function and creation. I rejoiced at it with so many at the outset and suffer to this day no qualifications in support for the approach. After all my years in the Legislature sharing with so many the immense frustration and sense of limitation which members of the Legislature must feel from time to time, the creation of the Office and what it disposes is a joy. Despite what many of my own detractors have said, I am not often mindless but in the question of the Ombudsman's Office, I subscribe to an uncritical acceptance. However, within that context there has emerged within the Province of Ontario at least - it's uncomfortable for me to talk in generalities; I must relate it as all of us do to our own provinces - there has emerged a number of strains and difficulties. There have been some volatile and tempestuous moments in the life of the Ombudsman's Office in the first couple of years, moments that I think would have occurred, frankly, regardless of the incumbent. And I think that the legislators have shown themselves, despite the creation of the Office, not immune from passion and feeling.

I will remind you that one member of the Ontario Legislature recently described the Ombudsman's Office here as "an horrendous monsterial empire." Others given to a more precious sense of

grammatical accuracy have also criticized the Ombudsman's Office saying that there were not guidelines sufficient to control it, saying it had shown its own instincts for bureaucracy.

Whatever the words, the fact is that having created the Office and chosen the incumbent, a number of tensions have flowed. And that leads me to three simple observations which I hope may help to stimulate the discussion that will follow this panel and with the new liberation which I feel these days, I shall utter them as straightforward as I can with as many heresies as I can muster.

Number one, I think the problem in this jurisdiction and perhaps in others lies with the legislators and not with the Ombudsman. I think that some of my colleagues suffer palpable tremours about the intrusion on what was a sacred ground for the legislators, and I suspect that this is a continuing anxiety in the evolution of the Ombudsman's Office. I don't know whether it's a fear which politicians have or legislators have from time to time of having inadequacies exposed, or whether it's a fear of having their authority usurped, but there is a certain rivalry which emerges at least early on and may persist which to me frankly makes little sense.

We drafted - I have it before me - a pretty good piece of legislation. I'm going to suggest shortly ways of improving it slightly, but a pretty good piece of legislation. The authorities and powers are spelled out with some precision. I cannot imagine why politicians anywhere need feel it as a challenge. I agree with Mr. Lévesque entirely - the roles are surely complementary. As a matter of fact, I think members of legislature should thank their lucky stars that the Ombudsman is now around and has taken root in so many provinces. I think if I may be allowed a very personal observation of two particular cases before me at this very moment - one an unhappy dispute which has gone to a Review Board between two ministries over the question of funding support for a child who requires special education. I think of another dealing with the very intricate and incomprehensible workings sometimes of the College of Physicians and Surgeons. I am a politician active in this province - there are others here active in this province. We all feel ourselves to have certain personal clout, but you know, as I know, that that clout runs out pretty quickly in the face of bureaucratic impasse, and I'm rather tickled at the prospect that I have somewhere else formidable to turn to have the case adjudged by someone else. And if this isn't presumptuous, I think that the M.P.P.'s legislators having created the Office must then somehow learn to maintain perspective and don't lose sight of what we have created because of one trivial difference of opinion or one issue where we take offense. I fully expect to disagree from time to time with the Ombudsman of the Province of Ontario. I don't think he expects a wilting deference from me or anybody else, but we

cannot lose sight of the greater proportion of what we have created.

The statistics in the Province of Ontario, contained in the Second Ombudsman's Report, show nearly 5,000 cases opened in less than nine months, and all of them that can be handled ably, presumably handled ably. Why should there then be tension between the Legislature and the Ombudsman? In this Province, after all, we are able to raise generic issues in the Legislature which impinge on this field. We have, and I'm fascinated by the discussion that's taking place, a Select Committee that flowed almost involuntarily from the process which may turn out to be a splendid bridge between the Legislature and the Ombudsman, although I must say that even that raises qualms in my mind about the extent to which the Legislature may then find a way of intruding on the affairs of the Ombudsman. And, ultimately we control the purse strings of the Office and can deal with any incumbents under the Act. So I hardly see that legislators need feel threatened or need exercise undue criticism.

It leads me to the second point that I wanted to make which may flow again from the early nature of the Office in Ontario, the relatively early nature. But doubtless other Ombudspersons here would have felt likewise. I'm most concerned about the battles over money and estimates, which have characterized part of the evolution in the Province of Ontario. And for those who say from that, that I'm implying a carte blanche, I think my own personal instincts would be to say - just about, just about. If the legislature creates the Office, gives it definition by statute, appoints an incumbent unanimously approved by all parties, then I think we have to assume that reason abides in the Office, otherwise our collective judgment is certainly suspect and that in terms of any cost-benefit analysis or in terms of what some of my friends across the floor of the Ontario Legislature like to talk about, return on investment, we are getting a great deal more from the Ombudsman's expenditures in the Province of Ontario, it seems to me, than we get from the expenditure of similar amounts of money in other areas. I have come to the conclusion, although I was a little concerned at one point, I think I have come to the conclusion that we should stop cavelling over dollars as well and that that should be an inherent part of the creation and then evolution of the Office.

The final point I wanted to make briefly is that I think the experience in Ontario already shows, and I think the Ombudsman has argued it effectively in the two reports that the office must be broadened in authority. To pick up exactly from where Mr. Justice Clement left off, that there should be specific legislation in the Province of Ontario which gives the Ombudsman a much greater realm of authority than we've now granted under this statute. There are too many cases that come to the Ombudsman's attention now that fall outside his jurisdiction. I noticed again, looking carefully at the report, that 80% of the cases which are

unresolved because they are ultra vires. And many of that number fall in the field of municipal life, of hospitals, of colleges, universities, etc., areas where it seems to me logically the Ombudsman's function should extend. Hopefully, given the discussions within Select Committee and Legislature and Ombudsman's Report, it may be possible for us to do that.

Also in looking at the Ombudsman's function, albeit in a more particular and more limited way, I think one of the gaps in our legislation which has been identified by our Ombudsman, is the question of how you get a major report or document to issue to the public, a document such as that which flows from our - the Ombudsman's investigation into the correctional institutions of Ontario, - how you get that report to flow to the public even if in good faith the Ministry involved responds to it. That is an important area where an amendment to the legislation would also be merited.

I guess from time to time I shared the qualms of my colleagues about this tenuous and sensitive relationship which we fashioned as legislators with the Ombudsman. I think if I had it to do all over again, my instinct would be to set up a statute with the much wider authority as indicated, and try to establish what amounted to five years of a policy of non-intervention on the part of the Legislature. Because I'm not so much afraid ultimately of abridging authority of the Ombudsman, I am much more concerned about not giving the Office sufficient scope. Thank you
Mr. Chairman.

PANEL CHAIRMAN

SIR BARNETT COCKS

Once again we are all very grateful for a totally new approach by Mr. Stephen Lewis, a Member of Parliament who advocates generous treatment of another institution, far-sighted treatment I think. I've studied the 19th century of the British House of Commons and in their control of finance, in nearly every case they preferred to obtain champagne on beer money, and in nearly every case they were wrong in the economies on which they insisted. It's very refreshing to hear Mr. Stephen Lewis bravely saying that finance is not the overall and end-all of a relationship between the new institution of Ombudsman and the old institution of Parliament. I think this is what I would like to think is enlightened finance, that the extension of the Ombudsman's work which is continuing now throughout the world will be of immense benefit. As I tried to say when I made my address yesterday, justice cannot be limited by national frontiers and nor can the work of the Ombudsman. It would be no satisfaction to Canada or the world if Ontario was the perfect organization, but beyond its frontiers all kinds of injustices which an Ombudsman system could

remedy were taking place. I was very pleased to see that the Select Committee of your province had been in conference with our Select Committee at Westminster, and these lookings beyond the frontier which inevitably cost money should not only be maintained but be extended. In my own field I did my best when I was the chief executive of the House of Commons to extend the exchanges of staff which promoted great understanding. I had sitting at the table of our House wearing wigs and gowns, men from Asia, from Africa, from Canada and from Australia. And I know the interchange was so valuable, not that we were summoning them to Westminster to learn, but we were learning from them when they made these journeys. I hope therefore that the legislatures and the Ombudsmen will extend their experience by frequent travel overseas as they are already beginning to do so.

Mr. Lewis thank you again for your very powerful and interesting and new avenue of approach to this problem. And now we call upon Mr. Norman Webster on my right, Legislative Journalist of the Globe and Mail in Toronto for a totally different approach I think. The press is the great onlooker on all our deliberations, and I know it's sometimes thought that the press is a cynical organization engaged in sinister conspiracies to destroy the state. We have had a prime minister recently retired in London, Sir Harold Wilson, who really had an obsession that the press had even bugged his Cabinet room as you may have read, and Mr. Jim Callaghan, the present Prime Minister has had to deny that the press had done any such thing. So Mr. Webster, I'm sure, you, in your long life, would never resort to placing a bug in the office either of the Premier or of the Speaker, Mr. Russell Rowe, my friend, or of any other official in order to learn or study the interaction between the Legislature and the Ombudsman. Mr. Norman Webster.

PANELIST

NORMAN WEBSTER
Legislative Journalist
The Globe and Mail, Toronto

Thank you, Mr. Chairman. I wanted to thank you earlier for your exquisite introduction detailing the happy state of things at Westminster between journalists and politicians, where leading politicians of the day adopt a proper and deferential attitude. It's something that we've been trying to get here in Ontario. The audience is full of politicians today. We have one on the platform who was just beginning to adopt that attitude when he decided to leave the leadership, which is most unfortunate.

I, like Mr. Lewis, am not very big on Ombuds theory. I know only what's happened in Ontario and I can only speak of specifics. Clearly the problem as outlined by Mr. Lewis is that some members of the Legislature look upon the Ombudsman more as a competitor

than a co-worker. Mr. Maloney has very carefully, at every turn, referred to the members of the Ontario Legislature as "my fellow Ombudsmen" which is a very good move. However, it has not in fact brought as much harmony as I think the chairman might have had you believe exists in Ontario.

Mr. Lewis went to some lengths to say that his colleagues were off base. Maybe. Perhaps if I could slightly alter the way I was going to present my remarks this afternoon and perhaps present a few things from the point of view of an elected member - how he sees things. There are those who see them rather desperately. I remember writing when the original Legislature debate on the Ombudsman was held, and the name of Arthur Maloney had already been put in nomination, the members were referring to Mr. Maloney roughly as a combination of Mahatma Gandhi and the Six Million Dollar Man, someone who would leap tall buildings in a single bound. The problem is the members have found that he's serious, he really is going to leap tall buildings in a single bound, and take his whole 120 people with him. And that has bothered a few.

We've heard from - as Mr. Lewis quoted earlier - the backbenches, that Mr. Maloney's office has been called a horrendous monsterial empire. We've heard from more urban regions, perhaps feeling a bit more personally threatened. One member said he felt castrated by the Office. We've heard, I think, perhaps a little more seriously from the Select Committee of the Legislature on the Ombudsman and I just wanted to quote on line. There was a dispute between the Ombudsman and the Select Committee and the Ombudsman walked out, questioning the jurisdiction of the Committee to look into a particular matter. The Committee reported that "it regrets the conduct of the Ombudsman in walking out of the Committee meeting. This was an ill-advised act displaying an unfortunate attitude and a misunderstanding of the role of this Committee". If you know the silky smooth understatement of the Chairman of that Committee, you will realize that that is the hammer of Thor coming down. And that is the way a number of the members do feel. It has led to a certain amount of squabbling, some of it ridiculous. There has been an awful lot of sniping about the Ombudsman's cars and the salary of his chauffeur and the amount that he paid to have coffee brought in. Most grave of course the charge that when he has guests in to his office, he serves them imported sherry.

The problem is that it's not just the government people who are doing this, it's not just assaulted ministers who are snapping back, but it's quite thoughtful members of the Opposition who would be expected, automatically I think, to be on the Ombudsman's side. All are not. The problem perhaps lies in something that was outlined in a discussion paper which was sent around which I read last night. It says that "the Ombudsman has the theoretical approval of the legislature as a whole. He generally gets his way in matters that do not involve a radical departure from existing practices." And I think what has bothered the members is that

in both style and function, there has been a radical departure from existing practices in Ontario. If we may look at style first and this may seem picayune but it is not, because it is I think, a very important part of the problem.

The Ombudsman began to set up shop in 1975 on a large scale. He made no bones that he wanted to produce the best Ombudsman operation in the world. There was a large budget, large numbers, paid large salaries. This unfortunately came at a time of restraint in Ontario when members' salaries were frozen, mandarin salaries were frozen, deputy ministers were told they could not hire more staff. Indeed the civil service complement in Ontario was cut back, and this bothered people especially when they noted that, for example in Quebec, the Ombudsman's Office had a far smaller budget. That in Sweden where the concept began, the Ombudsman's office had a far smaller budget for roughly comparable population and there was an awful lot of grumbling and rumbling down the back corridors about the matter of style and expense. This led to some very bitter budget battles, most of which I think, happily, Mr. Maloney has won, and the Office is now a first-class operation. But it's a big operation, it's an expensive one. It is, I think as Mr. Lewis said, a justified expense but it's one which a lot of members, seeing again their salaries frozen, seeing the government cutting back everywhere else, felt was too much.

Then of course an outgrowth of this - personal relations. Members have not been hesitant to voice their opinions and Mr. Maloney - an old campaigner - has not been hesitant in voicing his own back, and there have been some quite bitter exchanges at the Select Committee. Mr. Maloney, as one of the premier defence lawyers in Canada, has come disturbingly well prepared. And some of the rather silly interventions by members have been shot down massively, and that of course has led to charges of intimidation. You didn't let me hit you, therefore you're intimidating me.

However, it would be silly not to point this out because it's an important matter. Personal relations and style have counted in this.

There's one other aspect which we'll look at now and that is function - what should the Ombudsman be doing, and here we have another very distinct difference between Ombudsman and numbers of - maybe not the majority of - but numbers of the Members of the House. First, the things that the Ombudsman is doing are what used to be bread and butter for the average M.P. - social work for his constituents. When the Ombudsman does that sort of thing, it takes away some of the responsibility, some of the work certainly, but also some of the vote-getting power of the local M.P.P. and there has been some unhappiness with the fact that the Ombudsman is moving into their bailiwick just at a time when they have been

given more funds from the Legislature in the way of constituency offices to expand their bailiwick. The Ombudsman has moved in and taken away a large part of this. Now if I were an M.P.P., I would be absolutely rejoicing, because to get rid of all the tedious business which the M.P.P.'s usually are subject to, would be a tremendous blessing from my point of view; but not all of them are happy to get rid of it. A lot of them are quite comfortable doing this sort of thing. It is the major thing that they do as elected representatives.

Second point - jurisdiction - what should the Ombudsman be doing? Should he be, as he did shortly after setting up shop, undertaking a major investigation of the Provinces's prison system? Obviously if a prisoner complains about treatment, the Ombudsman should look into it, there's no question about that. But should he be undertaking a complete investigation of, I think, a policy area. That certainly is how many of the members see it. He has done that for two years. He has produced a large report. It's still in the final process - it's going back and forth. There is some question about whether that will be made public. But there are a number of M.P.P.'s, and I think fairly thoughtful ones, who have questioned whether this really is the sort of thing the Ombudsman should be doing. I know, just quoting shamelessly from one of my own columns, which quoted shamelessly from James Bulbrook former Liberal member from Sarnia. He was worried about the expansion of the role of the Ombudsman from defender of the citizen against bureaucracy to one in which he challenges public policy and replaces the legislature as watchdog over the government and particularly in this area. And he said this "creates challenges between the Office and government and collaterally seems to usurp the function of the legislative process". That's something which has bothered some quite thoughtful people.

Finally, jurisdiction of the Select Committee in matters of the Ombudsman. The Select Committee has been a very useful thing I think. We're still feeling our way in Ontario. The Select Committee came after the legislation was set up because there was a pickle which everyone got into and the Select Committee was established. But what should the Select Committee be looking into? There was a strong dispute between the Committee and the Ombudsman over whether it should look into the complaints of a certain Member that a member of the Ombudsman staff had been used for political purposes in his own riding. The Ombudsman himself looked into the case, decided that the Member was right, took action, sent out apologies and so on, which in the normal course of events would seem to settle the matter. However, the Committee felt that it had the jurisdiction to look into this matter. That's an interesting one, we should talk about that. It felt it had the jurisdiction. The Ombudsman said no, it has no such jurisdiction, that if I have to keep running up to Queen's Park every time a Member or an aggrieved citizen lodges a complaint against me or a complaint against someone from my Office or a complaint against how I've handled an investigation, I'll be spending all my time at Queen's Park and I won't be able to do

this. Furthermore, we're getting politics into the Ombudsman function - very good points. He walked out of the Committee; the Committee was affronted and said so in quite strong language which I've already quoted. Basically, in Ontario the relationship is not yet settled. There are strong personalities on both sides and things are still quite sticky to the extent that at the moment there is a recommendation from Mr. Maloney that a management study be made into his Office to realign things. The management preliminary study had indicated that he's being swamped by administration and they need to revamp the administrative structures. This letter of recommendation was written by the Management Study people in February. The Select Committee is now having a feasibility study into whether there should be a study. We're at that point. Things are not progressing.

I think, if I may end, I'd like to re-emphasize two points which I think should be discussed. One is what should the Ombudsman be doing? Should he be getting into major questions of policy such as his prison investigation? I must say that I talked to people in the Legislature and I go down gnashing my teeth to Mr. Maloney's Office where he pours me some imported sherry and I change my mind. I'm not sure where I stand on that one frankly. The second one is the matter I've just mentioned, the jurisdiction of the Select Committee to look into complaints against the Ombudsman, complaints against its handling of various matters. Mr. Justice Clement has brought up the possibility of, in effect, an appeal mechanism in the Select Committee whereby a citizen who felt that his case had not been properly dealt with could go to the Select Committee. Obviously that raises questions. Are we going to get into an endless series of appeals from the Ombudsman, and as I understood this function and as Mr. Maloney has said quite clearly the whole idea behind this was to get away from time-consuming and cumbersome investigations. You should have an officer who could take simple direct action. So there are some problems. I think perhaps those are a couple of things we should discuss.

PANEL CHAIRMAN

SIR BARNETT COCKS

If I could address myself on behalf of the conference to Mr. Norman Webster. I understand now what was meant by the Ontario Commission when they said Ontarians live in one of the most open societies on earth. We are free to express our opinions on almost any subject and either as individuals or in the form of a collective demonstration to confront those who appear most likely to wield the power to get things done. Mr. Webster, your words I'm sure will be graven on the hearts of the legislators who have

heard you this afternoon and also on the hearts of the Ombudsman's Office on what you have said. I was delighted to find the high standard of controversy, for which I expressed a hope when we began, is being maintained. I wonder if we could now invite questions. You have heard the four members of the panel and myself giving you some views, and with the permission of Colonel John Page, perhaps one or more of our colleagues and audience here would come to the microphone and ask a challenging question - something to throw us back on our heels. Don't pull your punches as the panel certainly has not done this afternoon.

DR. HARRY SMITH

Mr. Chairman, I should like to ask the active politicians, Mr. Lévesque and Mr. Lewis if they believe that, to use Mr. Lewis's words, "palpable tremours" still exist between the Ombudsmen and the legislators or that they feel they're, again your words Mr. Lewis "that their authority may be usurped" and that the legislators feel somehow threatened by the Ombudsman. Do you feel you could speak for some of your colleagues in this regard or even Norman Webster who seems to be privy to some of the thoughts of the politicians. What are the real feelings of your colleagues about the Ombudsman because we don't have a Select Committee in Nova Scotia and have complete lack of interference by politicians which is a very good thing. But at the same time there are certain things I want for my office such as more space and more staff. I've been asking for it for two or three years. I should ask Mr. Maloney probably how he went about it.

NORMAN WEBSTER

Just do it.

DR. HARRY SMITH

What I'm saying in other words is it is because the politician may be threatened, feel threatened or have these "palpable tremours" of which you speak.

PANELIST

STEPHEN LEWIS

Mr. Maloney's approach to enhancement of his Office has been to cast himself in the role of a trade union making its opening

wage demand. (laughter) It has worked most effectively. I think that it is true that even in my own caucus among my own colleagues there remain these anxieties which Norm Webster has quite rightly referred to. I suspect that in Ontario, time will eliminate the sense of being threatened, the sense of having their constituency function usurped. Because most M.P.P.'s I believe understand that they could work night and day on their riding problems and still find that they are not overwhelmed or not overtaken by the specific matters which end up in the Ombudsman's Office. So I think time will heal that anxiety. Time may not so easily heal the anxiety which flows from that about how much authority, prominence, stature you give this Office or this incumbent, whether or not he or she should be allowed to undertake investigations which really do challenge government policy as Norm said. I happen to be one of those who believes that this should be the function of the Ombudsman but a lot of people are skeptical about it. I guess I look at the Select Committee as a way of resolving it. I guess really I like the Select Committee as the route to feeling our way towards a consensus where we'll work it out, and it may be tough going for a while but I think that's the route.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you Mr. Lewis. Mr. Lévesque as a Leader of the Opposition in Quebec Province would you like to add anything to the question put to Mr. Lewis?

PANELIST

GERARD LEVESQUE

Well I must admit that even as a Member, first of all, I have many of these requests in my rural riding of Bonaventure and I simply want to add that I welcome and I still welcome the work of the Ombudsman. This has in no case disturbed my relationship with the electors of my riding and I think that this is shared by at least all those whom I've had the opportunity of discussing the matter with among my colleagues. Maybe our Ombudsman has another experience, but that is the experience I have as a member in the Legislative Assembly.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you Mr. Lévesque. Now would we have any other Ombudsmen within the inner circle of red notices to ask a question, or if they are silent or satisfied, we could go beyond them to the general audience.

ARTHUR MALONEY

Mr. Chairman, speaking for myself, I feel like the corpus delicti. And as one columnist might put it, I think I'll spend the rest of the afternoon lying in state. So I have nothing to add.

GEORGE MALTBY

Mr. Chairman, we had our two opening batsmen, Mr. Justice Clement and Mr. Gérard Lévesque, who did a stout job in softening up the bowling. And then in came the third wicket down, Mr. Stephen Lewis who I'm sure you'll agree with me, in terms of cricket, knocked a century with his brilliant oratory. And although there are eleven batsmen in a cricket match, in came Mr. Norman Webster, last man in and a match to win, usually the bowler is the last man in, and he also did an excellent job and carried his bat.

PANELIST

STEPHEN LEWIS

You couldn't use football or baseball or something -
(laughter)

GEORGE MALTBY

That wouldn't be cricket. I must say that had I been sitting in the same seat as Mr. Gérard Lévesque I would have said exactly the same as he has said about Quebec, as would relate to Manitoba. We have no special Select Committee to review the activities of the Ombudsman for the preceding year. I've usually ended up my introductory comments in my annual reports by simply stating that if Members of the Legislative Assembly require any clarification or any further explanation with regard to my year's activities, I am available. And after the third year of saying that, the Leader of the Opposition requested that the Ombudsman appear before a Committee of the House to further elaborate on his

report and to answer questions and as there was no special committee they simply used the Committee on Elections and Privileges. I was required to appear before the Committee on Elections and Privileges on one occasion only and that meeting lasted about 40 minutes because they didn't know what to ask me. I was rather surprised at the lack of knowledge by some members of the Legislative Assembly about the Ombudsman idea and the function of the Ombudsman. With regard to the Ombudsman usurping the function of the Member of the Legislative Assembly as a kind of Ombudsman with his constituents, once again I agree with Quebec. I receive quite a percentage of complaints from Members of the Legislative Assembly and they're usually sticky ones that naturally the Member has tried to rectify and satisfy his constituent but he obviously does not have the statutory powers to require the production of documents and to call people before him and if necessary to put them on oath. I have also, on several occasions, picked up a complaint from a Member, either from a Member of the Opposition or from a Member of the governing party and have been able to bring about redress of grievance where the Member has failed. I don't think that that in any way may lose that Member a vote because he can turn around and say, well I referred your complaint to the Ombudsman and the Ombudsman was able to bring about redress of grievance. Or, on the other hand it may be that the Ombudsman has made a determination that the complaint is unsupported and so therefore the Member can in turn, if he so wishes, explain this to his constituent. I don't think that that in any way detracts from the position of the Member of the Legislative Assembly. I might also add that I have complaints referred to me by the Premier himself, by Ministers, even from the Leader of the Opposition. And I have stated in my annual report that there are occasions when one feels a sense of political overtones in some complaints which may be referred to my Office; but, I've stated that I will not be petrified by a complaint which may have some political overtones. My prime concern is whether or not there is a justifiable complaint against the administrative arm of government which merits investigation. Thank you, Mr. Chairman.

PANEL CHAIRMAN

SIR BARNETT COCKS

I'm sure we are grateful to you, Mr. Maltby. You did mention one point - your annual report - and in general if I could put in a plea to all the Ombudsmen present here, the circulation of annual reports is at present rather difficult and I know at Westminster, and I'm sure in the various provinces of Canada, we could learn a great deal by some more regular exchange of information than exists at present, and also by some kind of documentation or indexing of the reports so that we would be able to turn up at once a similar occurrence in one province or in another country. We have with us

here an Ombudsman or a representative of the Ombudsman of Scotland. And personally, until I came to Ontario, I had no idea that they had dealt with, this year, 267 grievances in the city of Edinburgh. We always looked on Edinburgh as a city which had no problems but clearly it has, and it would be - specially with the close links between Canada and Scotland - of great interest to see how the local Ombudsmen in Edinburgh are dealing with a kind of problem which a locality such as Toronto must also be encountering and the variation in the solutions. All this would do nothing but strengthen the Ombudsman system which as I advocated yesterday should whenever possible be extended and not retain within the frontier of one country the wisdom of all, particularly the wisdom of Manitoba would be welcomed everywhere. I think if this Conference could end by thinking of improving the communication not only between the Ombudsman and the Legislature but between Ombudsmen as well, it would be of great advantage to all of us and particularly to those who, in time, might benefit from the counsel sought from Ombudsmen which again is gradually being appreciated in England, but not sufficiently widely studied. Thank you again Mr. Maltby. Now are there any other Ombudsmen within the charmed scarlet circle? I don't know what the scarlet portends but evidently it carries with it exceptional knowledge, looking at the Ombudsmen seated below me. Would any like, not only to make a question, but to make a statement to the Conference? Please, sir.

AMBROSE PEDDLE

Yes Mr. Chairman, let me just say very briefly, it's been a rather fascinating afternoon; the eloquence and wit and knowledge that's been displayed on the platform this afternoon, Mr. Webster doing full justice to his namesake who wrote the book, and Mr. Lewis, I think, an amazing presentation. I almost think that some of his remarks should be compulsory reading for every international economy commission in the country, as far as the Ombudsmen are concerned. My brief question is really not to either one of those gentlemen but to the Honourable Mr. Justice Clement. And I'm not being facetious but I very seriously ask him if he were serious when he talked about a Standing Select Committee of a non-partisan nature. If it's possible to come up with that in Alberta, it's certainly possible to come up with it in my province

PANELIST

MR. JUSTICE C. W. CLEMENT

I've always understood that's a theory which is subscribed to in practice of politics. You pick some from each party, maintaining the chairmanship for the leading party. I think that's as close as you could come to what might be described as

a non-partisan committee. But you must remember, I'm not active in politics and have had very little experience in the past in these matters so I'm theorizing there too.

AMBROSE PEDDLE

Would you be prepared, sir, to substitute a committee that is as non-partisan as humanly possible or something like that?

MR. JUSTICE C. W. CLEMENT

That's always our human endeavour I think, yes.

AMBROSE PEDDLE

Thank you sir.

SIR BARNETT COCKS

Thank you.

DR. RANDALL IVANY

Mr. Chairman, I can't let that comment from Newfoundland go by. As an ex-Newfoundlander who can't, or at least who has to be impartial but perhaps with difficulty - sometimes with difficulty has to be more partial than I want to be.

I think we can and we should as Ombudsmen encourage a Select Committee to sit, and too, perhaps one of the areas that it can be most helpful is in the area of the annual report. We've had a Select Committee in Alberta. Mr. Justice Clement made reference to it. I would have liked, and I hope that it's not too late at this stage, to see such a committee continue on a reasonably permanent basis to deal with such things as the annual report. A committee where the Ombudsman can go and make representation rather than having to go before the Legislature or indeed take other action which may be cumbersome. I'm fully convinced that even in Alberta, it's entirely possible to have a cross-section of all parties represented in the Legislature to form this Select Committee.

My great regret in the three and a half years that I've been in office and certainly in the six and a half years prior to that is that there has only been one occasion when a Select Committee has been in operation and that was simply to review the legislation after a ten year period. I would heartily endorse what Mr. Justice

Clement has said and hopefully that some cognizance will be taken of the fact and that there will be a committee established in the future.

AMBROSE PEDDLE

Mr. Chairman, if I may clarify. I was not setting up a position as being opposed to a Select Committee. The point I was endeavouring to make was that it's not up to us to decide whether there is a Select Committee or not. That decision is made and we're in the hands of the gods more or less. We don't make those decisions. Thank you.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you very much Mr. Peddle and also Dr. Ivany. I wonder, as the speeches are being recorded, you could either at the beginning or end of your remarks give your names and provinces so that those who are editing the debate or editing the recording will be able to pick up the different speeches. Otherwise you might find your wisdom attributed to another Ombudsman. I'm sure none of you would be over anxious about that, but your legislators might not like to see all the remarks you're making attributed to the ombudsman from another province. Thank you very much Mr. Peddle and also Dr. Ivany. Are there any other contributions from the inner circle?

GEORGE MALTBY

Mr. Chairman, I would just like to ask a question of Mr. Justice Clement. I ask this question in all sincerity because I'm not too familiar with the procedure of the House. You referred, on page three of his paper, that the Ombudsman may be summoned to the Assembly by Mr. Speaker. If such an occasion arose, could you please explain to me how that would be done.

PANELIST

MR. JUSTICE C. W. CLEMENT

Now if you mean the exact techniques of what sort of a bench warrant is issued, Mr. Maltby (laughter), I'm not familiar. That's not the kind of a writ I issue but I understand a very compelling summons can be issued by Mr. Speaker and the man is brought forward to the House.

GEORGE MALTBY

I know that George McClellan appeared before the House once but I just wondered, if ever the occasion arose to summon me before the House, how it would be done.

MR. JUSTICE C. W. CLEMENT

No, I think in the very limited experience in Alberta, it hasn't amounted to more than a pointed invitation and it's been responded to; but it could go farther than that if there is some objection.

PAUL WOOD

Paul Wood from Alberta. If I could add to what Mr. Justice Clement has been saying, the way it simply happened with George McClellan and very nearly happened this spring, is that a motion is simply put before the House which if passed simply asks that the Ombudsman appear on a given topic and answer questions, and the Ombudsman of course simply responds to the motion.

PANELIST

STEPHEN LEWIS

Yes, may I ask a question? Do I take it then that the whole process of the Select Committee has so little credence that it was felt that the motion should be directed to the House rather than to the Committee? Or was the subject matter so serious that everybody there wanted to be part of it?

PAUL WOOD

Well, the Select Committee that was in existence in Alberta was simply to review the legislation after ten years and had no specific mandate to deal with cases or reports that we were making and as such, the investigation that prompted the motion was not within the mandate of the Select Committee.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you.

GEORGE MALTBY

Just one comment, Mr. Chairman. You mentioned the Scottish Ombudsman and we have with us the Assistant to the Scottish Ombudsman who happens to be an Englishman.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you for your comment, Mr. Maltby. I'm afraid I can't immediately respond to it, because if the Scottish representative is not within the inner circle he must identify himself by rising and speaking into the microphones which are in the centre aisle beyond the red circle or the scarlet crimson circle.

I think then if there are no other inner circle contributions to be made, we must look beyond and invite general participation by the conference, if anyone would be brave enough. Sir, would you like to be brave enough to stand and deliver at that middle microphone.

DR. MELVYN ROBBINS

Thank you very much Mr. Chairman. I'm Dr. Robbins from Toronto. Dr. Smith raised the question as to how he might secure advice as to the increase of his own budget. I'm reminded in one Ombudsman's report in Canada, the Ombudsman had a similar problem and he wrote that the Treasury Board was very difficult and he was thinking of following the advice of some of the public officials who said that he should request four or five times the number of staff he wants and then make a public show of reluctantly accepting twice as many staff as he actually needed. That actually is in one of the reports.

On the subject of budget, I thought Mr. Webster might be omniscient when he mentioned the Six Million Dollar Man. I was wondering if that's the figure that Mr. Maloney was going to request next year in his budget (laughter). Yesterday Frank Flavin the Ombudsman from Alaska, raised the question as to whether the Office of the Ombudsman can survive a bad Ombudsman. I think the question in Ontario is whether the Office can survive a good Ombudsman.

I do have a question on independence and on strengthening the relationship between the Ombudsman and Parliament. I'm wondering if members of the panel feel that the Office of the Ombudsman, as an institution and particularly in terms of its independence, would be significantly strengthened if the vote,

both in the Select Committee, in those provinces that have one, or on the floor itself, were a free vote. If this was then adopted, I'm wondering if Sir Barnett might comment as to what he would see is the long term implication as a precedent for Parliament itself having a reoccurring kind of report that would always be considered by a free vote.

PANEL CHAIRMAN

SIR BARNETT COCKS

Dr. Robbins, were you commenting or raising the point of the succession in the hierarchy, so to speak, of the Ombudsman?

DR. ROBBINS

No, not the question of succession; the Select Committee of course will make recommendations to a Legislative Assembly as will an Ombudsman directly in some provinces. The question is whether the consideration of that report should be a matter of conscience and a free vote rather than subject to caucus and party discipline.

PANEL CHAIRMAN

SIR BARNETT COCKS

I think I would rather like Mr. Lewis to answer that because it's more, I think, within his field. Would you like to tackle that problem?

PANELIST

STEPHEN LEWIS

Well, even if it were called a free vote, I doubt that you'd even get one, because in speaking quite realistically, invariably a contentious matter within the report bears on the administrative apparatus of a government. A government then feels defensive. A government then mobilizes the ranks. One can't expect anything else. That's normal human political behavior although I'm not sure that I see it in quite that adversary way. That's why I, more and more, like just sitting here and listening to some of the comments, the curious way in which our own Select Committee emerged and how it may turn out to be a very effective prototype in the long run without sort of wondering whether you solve these things by free votes or party votes.

Norm Webster in using a pretty - I think he would agree - mild understatement said that our Select Committee flowed from a pickle into which many parties had somehow got themselves. It flowed from a pretty serious confrontation. It flowed from a really quite difficult situation. The interest inherent in the Select Committee, and it's just been handled, I think, in many ways very nicely, is that we got over that confrontation. Maybe not well, yet we got over it. There have been some unhappy moments since but we appear occasionally to get over them and one senses that by the constant testing of the competing forces, the thing will gradually sort itself out. That's a very satisfying procedure, I suspect, when I hear the Ombudsman from Alberta say that the only use for their Select Committee was to review legislation after ten years. Maybe Ontario is just naturally a more tumultuous province, but I like the way we're feeling our way towards it.

Our Select Committee by the way is chaired not by the government party, Mr. Justice Clement. Our Select Committee has been chaired by Opposition Members, as it happens, by New Democrats in both the minority legislatures. I cannot comment on the virtue of that. It speaks for itself. (laughter) But I can indicate to you that it can work more or less effectively even if a government Member is not automatically the Chairman.

PANELIST

MR. JUSTICE C. W. CLEMENT

I think perhaps it should be made clear that the Select Committee of Alberta was appointed ad hoc for one particular point and hasn't had, or doesn't have, this range which the Ontario Select Committee apparently has.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you very much. I was particularly interested in the remark made by Mr. Lewis that the opposition provide the Chairman in the Select Committee here. That was a proposal made yesterday by Professor Donald Rowat who said that this is a thought which ought to be borne in mind, that in all Select Committees linking the work of the Ombudsman with the Legislature an Opposition Chairman would be desirable. Certainly at Westminster now we have an Opposition Chairman of the Select Committee there. Also, in its latest report which only came out on Friday, the day I left London, there was the proposal that the public should be admitted

to all deliberations of the Select Committee so that there would be complete freedom of information which I'm sure Mr. Webster would appreciate. In most committees in London now, the press and public are admitted, but hitherto the deliberations of the Select Committee on the Ombudsman's reports have not been in public. Now if the Government or the Parliament accepts the recommendation of our Select Committee at Westminster, the public will be able to attend the full discussions, the full giving of evidence by all the witnesses before the Select Committee, which I think is a healthy sign of progress and I'm glad once again that progress has already been achieved in Ontario and no doubt has been copied at Westminster. The days are long when Westminster set the pace and the other Parliaments followed. I'm afraid only too often today it's the other Parliaments who set the pace and at Westminster we, reluctantly in some cases, follow their rather more forward-looking example.

I would like to ask Mr. Lewis or Mr. Levesque, however, to elucidate one point on which I myself, am uncertain. To what extent do party differences get carried into the work of a Select Committee? Because at Westminster we have the rather good principle that party differences are not brought into the work of a Select Committee. For instance, a Select Committee challenging the expenditure of the government and examining the work of Ministers will not show any prejudice either for or against the Minister when he's called as a witness before the Select Committee, as of course is often done now. That seems to be a very healthy advance in the work of Members of Parliament as a Parliament, and in not bringing, so to speak, the government caucus into one-half of the Committee and the Opposition into the other half of the Committee and a decision taken on party lines. Because to work like that nullifies a lot of the value of Select Committee enquiry into outside institutions. Mr. Lévesque, I wonder if you would indicate the practice in your Parliament and also perhaps Mr. Lewis, the practice in his, because certainly I am unaware of the exact balance of party work and parliamentary work in the wider field irrespective of party distinctions.

PANELIST

GERARD LEVESQUE

Well Mr. Chairman, I would like to respond very briefly to this by saying that usually the composition of these Committees is always with a majority for government representatives, for the majority I mean. Secondly, we might accept the case of the estimates for the Speaker of the House where there is this great cooperation and presenting suggestions and everybody seems to be working along the same lines, with a lot of objectivity and openness. That is what you have - what you seem to call for. It

wasn't, certainly, on party lines in my experience that these subjects have been studied. But when you come to these Select Committees for the study of estimates for particular ministries, departments, well then the Minister is a member of the Committee. He doesn't come before the Committee. He is already a member of the Committee and he has a majority on which he depends. This majority usually is more silent than the Opposition members who really take advantage of the hours of discussion of these estimates to be a little tough on the Minister and his administration. So it's not exactly as you would like it, but it is as it is, or as I see it.

Though I must finally, if you permit, add that as far as the Ombudsman and Select Committee for the Ombudsman, this is something that I have no knowledge of except for one ad hoc appearance of the Ombudsman before a Committee, and I think it was the Committee of the National Assembly which looks after the rules of the House. It was an ad hoc affair rather and it was, I think, at the request of the Ombudsman himself at the time. So maybe I wouldn't be against the fact that if the Ombudsman or Madame the Ombudsman would like to meet with a committee of the House, I imagine her request would be accepted immediately. But my attitude was that we should avoid having the Assembly looking into the work and the particular dossiers of the Ombudsman.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you Mr. Lévesque. Now I wonder if you sir, Mr. Lewis, would indicate the practice in your Select Committee.

PANELIST

STEPHEN LEWIS

Select Committees in Ontario are established for specific purposes and in my experience more limited than some in participation in Select Committees. They always diminish partisanship and you often get some quite remarkable recommendations with unanimity from Select Committees and very strong personal friendships which override politics and a newer partisanship and new respect for each other's capacities as Members frequently flow from Select Committees where the pressure and tension of the House isn't always apparent.

But, Sir Barnett, when the chips are down, when a matter dealt with by a Select Committee - let us say the Select Committee on the Ombudsman - really deals with something critical which must

necessarily test the mettle of a government, then the partisanship comes back. That's the way, alas, the party process works. So on balance they're very desirable organisms but they don't eliminate the possibility of taking tough party lines when you've got a predicament and that, in fact, has happened once or twice in Ontario.

PANEL CHAIRMAN

SIR BARNETT COCKS

I can't quite see. Is that Professor Friedmann? I can't quite see you at this distance.

PROFESSOR FRIEDMANN

Mr. Chairman, I'd like to address myself to two central issues, the first being the desirability of having a committee of the legislature deal with the Ombudsman on a continuing basis. I haven't got an answer either. I'm of two minds on this and I think it really depends on the quality of the legislature that you have. If you have a legislature that is clumsy, inexperienced and does not know anything about the Ombudsman, obviously their setting up a committee to look into the Ombudsman could be potentially a disaster for the Ombudsman institution. So the treatment that seven out of the eight Ombudsmen have received from the legislature which I would classify as benign neglect, has been a boom to the institution. The institution has been able to grow quietly and establish itself without interference, an interference that could be very detrimental on occasion.

The one instance of my own province, Alberta, where the legislature has devoted some attention to the Ombudsman - or I think two - one was a committee of the whole House and the second was a Select Committee to look at the Ombudsman Act - haven't convinced me that anything good could come out of legislative attention to it. However, I'm convinced that in the case of Ontario some very innovative and creative action could come out of a dialogue between the Ombudsman and the legislators. I think the reason why it started was not really a quarrel about budget, not really a quarrel about employees of the Ombudsman. I think these were really just the superficial appearances or the superficial signs of a disagreement over fundamentals and these fundamentals I think are represented in the vision that the incumbent, Mr. Maloney, has set for the Office of the Ombudsman.

And this brings me to my second point, that the Ombudsman could and indeed should be a reformer who doesn't just look at individual cases but where he finds there is a need for general reform, let's say the prison system, he goes in and makes a long

investigation, inspection and comes up with recommendations. On this issue, whether the Ombudsman should take on these functions or should not take them on and leave them to a legislature, I would in a way, I suppose, put in a plea for the citizen. The citizen's viewpoint should really decide this particular issue. The legislature is strong enough, it can look after its own interest, but the citizen has no one other than the legislature to look after the public interest. If the legislature is either indolent or incompetent to deal with general reform, let's say in the prison system, and nothing gets done, then it's a benefit to the citizen if the Ombudsman takes it up, points out weaknesses and insists on reform. So in this regard, I wholeheartedly approve of Mr. Maloney's direction for general reform and I would say - I'm not quite suggesting that we should be as liberal as Chairman Mao when he suggested, let a hundred flowers bloom, - but I would suggest let's have two flowers bloom. Let's have two opinions on the adequacy of the corrections service, or whatever it is, and the legislature can hold its own. It can have its own investigation on top of the Ombudsman. It can in fact do its job so well that the Ombudsman's investigation will be unnecessary. But I don't think the answer is to restrict the Ombudsman from becoming a general reformer. I think the two should work hand in hand, and they can. This will be to the benefit of the citizen and so, this would be my point of view.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you very much, Professor Friedmann. As you come from Alberta, I believe, or certainly are at present, or originating from the University of Calgary, would you Mr. Justice Clement, like to add anything to his recent comment?

PANELIST

MR. JUSTICE CLEMENT

No, I don't think I have anything useful to add to that, Sir. What emerges from there is to me a question as to what function can be properly attributed, if any, to an Ombudsman in the way of influencing legislative policy. That is certainly an area that I wouldn't want to get in and which I think would be a very difficult area indeed for an Ombudsman to discharge and maintain a relationship with the legislature.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you. Perhaps then in the pause, I could draw attention to a very helpful and intensely documented contribution by Professor Friedmann which he was kind enough to give me yesterday. It's entitled The Public and the Ombudsman - Perceptions and Attitudes in Britain and in Alberta. I'm an Associate Member of Justice, the institution in London which is studying the Ombudsman field and the whole topic and I will have great pleasure in commending Professor Friedmann's admirable treatise to Justice when I return to Britain. I'm very grateful to him for having given me yesterday, a signed copy.

Other questions? There are two people on their feet in competition on two microphones. This once happened in the British House of Commons when the Speaker had been called to go to the Lords and Members were indignant that they had had the summons to the Lords. They decided to continue the debate and Sir Jeffrey de Freitas on the Socialist or Labour side was one of the contributors to the debate. To the embarrassment of Hansard, another Member on the Conservative side rose to his feet and also addressed the House. For the first time we realized the value of the Speaker because had he been there he would have asked one of the Members to desist, but as he wasn't there, both Members continued speaking and that I think is the first time in the history of the House of Commons when the brilliant Hansard staff were unable to continue.

So sir, will you now make your contribution and then I will call upon the Honourable member who has stood up behind you.

PROFESSOR ROWAT

Thank you very much Sir Barnett. Your comment was much longer than the one I intended to make. All I wanted to do was add a point to what Karl Friedmann had said, and that is I think it's a point in favour of a continuing legislative committee on the Ombudsman. I think that when the Ombudsmen make recommendations for legislative change, that is, for amendment to the laws, for improvements in administrative procedure, their recommendations are likely to fall on barren ground if there is no specific committee of the legislature ready to take up those proposals and recommend them to the legislature. I think that that is one of the main advantages of having a Select Committee on the Ombudsman on a continuing basis.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you.

JAMES RENWICK

James Renwick, the member for Riverdale sitting for the New Democratic Party and Chairman of the Select Committee in the interesting, perhaps on occasion brilliant, but short lived 30th Parliament. I did want to draw the attention of the conference to the provision in the British North America Act which scarcely allows a Member of the Assembly to relieve himself by constitutional convention or otherwise of the obligation to scrutinize the expenditure of public funds, and that is the provision which requires that any expenditure of public funds be introduced into the Legislature by a Member of the Government and be subject to approval of the House. I know there is an argument, particularly at this time in Canadian history as to whether or not the British North America Act is constitutional or not, because of the question of whether or not there was a quorum in the British House of Commons when it was passed. But apart from that particular question which remains unanswered, I think we've got to recognize that it is extremely difficult for the legislature simply, and I hesitate to disagree with my Leader, and I do so only because he is stepping down - that the Legislature should grant the Ombudsman a carte blanche with respect to the expenditure of public funds.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you Mr. Davison.

PANELIST

STEPHEN LEWIS

It's Mr. Renwick. Mr. Davison is beside him. I said almost carte blanche, Jim. Stepping down or not, I wanted to leave myself an escape route.

GEORGE TAYLOR

Mr. Chairman, George Taylor, P.C. Party, Member for Simcoe Centre, also Member of the Select Committee. I echo Mr. Lewis'

sentiments on the forum that we've got. I'm new to the Select Committee but to give you some idea, I've read all the reports which have been very enjoyable that have gone before. But there were some recommendations that came forth in the first report that did not need - and this is one of the very basic things - did not need to get to the Legislature because they were handled by the Select Committee. It's made up of all parties represented three, three and four - the Government party having four members. But by their getting to that body at an early stage, it saved the needless journey to 125 opinions and possible views by the time it got to the Legislative Assembly and maybe it wouldn't get anywhere. But by having gone before the Select Committee, they were handled, the recommendations were put into effect and you had a small and again to echo Stephen Lewis' words, nearly a non-partisan view of those. As a new member I have seen the House and the committees work and there is a great deal of difference between the partisanship between the two.

Yes, as a Government Member I suspect that I would start defending a Minister and his proposals, and it might show up in partisan votes but so far to date it hasn't. So if I can extend that information to you as Ombudsman that the Select Committee forms a minor forum and gives maybe an opinion, maybe a decision, maybe an instruction to the Ombudsman or his staff, then don't go any further with that matter because it won't have any great luck in the House because we are totally divided here and you maybe can resolve your problem yourself or under your legislation. As regards the legislation, I see it in a very formative stage, both trying to discover what the jurisdiction is, and I think, from our own Ombudsman putting forth what he feels his jurisdiction is, I think we can take that forth to the Legislative Assembly and get more amendments to the Act in line with what he wants and what the Legislative Assembly would feel he desires without having it go another route and try to enlist the good offices of say a Minister or some of the Government Members or Opposition Members to try to get forth a piece of legislation. I think it will come with a great deal of more strength from the Select Committee for amendments to that present legislation and I think we have a very ideal situation presently and I hope the Ombudsman does too, although there is a type of adversary feeling between the two at times but other times there's a great deal of co-operation from all Members and at other times an adversary approach to the Ombudsman. But overall I think it would be very good. Thank you Mr. Chairman.

PANEL CHAIRMAN

SIR BARNETT COCKS

Thank you Mr. Taylor. Perhaps I could go back just one moment. I'm extremely sorry to have mixed the name of one member

with another. My only excuse is the great distance and the aged vision with which I'm now the unhappy possessor, but I apologize to both of them. I'm reminded of the mayor of Moose Jaw in western Canada when he was visited by a British Select Committee and I gather he had an ironic sense of humour. He went into the room and said, now I can tell which member belongs to which party. And he went up to a dyed-in-the-wool Tory and said yes, now you're a real socialist. I can see that from your whole manner and bearing. You don't have to tell me what party you belong to, you are a Labourman. Then he went up to an extreme left wing Socialist in the group and said if ever I've seen a business tycoon you are he, and so on. And finally the whole committee or party was in roars of laughter because the mayor's mistakes of course were quite calculated, and he went around making out that every conservative was a red hot socialist and every socialist a reactionary conservative. So as I say, I'm very sorry. I apologize to both members for mistaking their names at a distance of 30 yards. Are there any other questions, because I think we have already had to postpone a television interview which Mr. Lévesque had arranged for him from 4:15 to 4:30 and he generously has not left from his seat and hurried away. But I assure him the television company will not disappoint you sir, nor will you disappoint the people who will tonight, I think, be listening to you. I certainly will be.

So if there are no other questions, I think Colonel Page will indicate that the hour of closure has approached, if it hasn't been overrun.

CHAIRMAN

COLONEL JOHN PAGE

On behalf of the audience, I'd like to thank Sir Barnett Cocks and the members of the panel for their presentations this afternoon.

The session is now adjourned. Thank you.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 14, 1977

Afternoon

BUSINESS SESSION - MOHAWK INN

CONFERENCE IS BROUGHT TO ORDER

GARY SPERANZINI

Director of Interview Services
Ombudsman of Ontario

(banging of gavel) Order please. I'm the Conference Chairman this afternoon. I'd like to introduce Kenn Barker who is sitting in for David Tickell. Kenn Barker is the Assistant Ombudsman for Saskatchewan. David Tickell, as you all know, couldn't be here today.

CHAIRMAN

KENN W. BARKER

Assistant Ombudsman
Regina, Saskatchewan

Thank you, Gary. Ladies and gentlemen, we will endeavour to give everyone time to speak to anything that is brought before the meeting. Having no formal constitution before me, or by-laws, I would suggest that maybe anyone who has anything to say when they are recognized by the Chair, if they would identify themselves, so that the meeting, the proceedings of the meeting can be heard on the recording. If you wish to introduce a motion, that will be fine. And would you try, before introducing the motion, to submit it in writing, so that if need be we can record it here and have it in writing. In that we have no constitution, anything which is adopted or any resolution of course, which comes before us and is decided upon, will be the responsibility of the individual offices to act upon in their best interests and in the interests of the institution of Ombudsman.

The first item that I have on the agenda is a report on the International Ombudsmen Steering Committee Meetings held in Paris, May 10-16, and this will be presented by Dr. Randall Ivany of Alberta. Before Dr. Ivany makes his report, I would like to welcome Mr. Michael Davison, the Chairman of the Ontario Select Committee on the Ombudsman and also Mr. Gordon Miller, a Member of that Committee. I think everyone has met them before and we very much appreciate that they are able to sit in this afternoon. The news media are represented and I also welcome them: Tom VanDusen of the Ottawa Citizen, and Roy Downs, Canadian Champion from Milton. The Chief Judge of the Magistrate's Court of Saskatchewan, the former and first Ombudsman of Saskatchewan, would like to make an introduction and I will allow this before Dr. Randall Ivany gives his report.

HIS HONOUR CHIEF JUDGE ERNEST C. BOYCHUK, Q.C.
Saskatchewan Provincial Court

Thanks very much Mr. Chairman. This is a distinct pleasure for me because this gentleman and I served in the navy together some 25 years ago; Dick Vogel, the Deputy Attorney General for the Province of British Columbia has arrived at our meeting and it is my pleasure to introduce him to those assembled here. (applause)

CHAIRMAN

KENN W. BARKER

Before we proceed is there anyone else that would like to be recognized in attendance?

Dr. Ivany would you please give your report?

DR. RANDALL E. IVANY
Alberta

Ladies and gentlemen, for the Ombudsmen, at least, this may mean some repetition because earlier we sent out from our office on return from overseas, the minutes of the International Ombudsmen Steering Committee Meetings. That was this document and most of what I've got to say has already been said in this book. But there are some things perhaps which should be drawn to the attention of this group on this occasion. The Ombudsman institution is now an international body. Last year's First International Conference in Edmonton was the start, the beginning of what I have no doubt will continue to be rather a significant movement in the Ombudsman world. And at that meeting we set up a Steering Committee which was representative of the world Ombudsmen and decided that the first meeting would be in Paris from the 9th of May until the 12th of May and this was held the past year. Mr. Maloney was also present from this group at that time.

First of all it was agreed by the Committee that Jerusalem would be the site of the next International Ombudsman's Conference. Probably in the autumn of 1980. There were three presentations made to the Steering Committee, Israel; Sidney, New South Wales; and Stockholm, Sweden. The major theme of the 1980 Conference was determined and agreed to. "The Ombudsman as Mediator, Figher & Reformer." It is our hope that every Ombudsman will endeavour to plan his attendance for Jerusalem in 1980 and that, indeed, he will also try to see that one member of his staff, at least, is present. Dr.

Nebenzahl, who will be the host of that meeting, will secure a list of general academics who have a knowledge of the role of Ombudsman and who would have a general interest in the protection of civil rights as invitees to the Conference of 1980. We will also consider the matter of inviting parliamentarians to the Conference. I will be meeting with Dr. Nebenzahl in October in New Haven when he comes to America and there we will lay the initial plan to begin work on the agenda for the 1980 Conference.

Concerning delegates to the Conference, it was agreed that the determination as to who should be eligible for participation, either as a delegate or as an observer, shall be made by the Chairman in consultation with the host, Dr. Nebenzahl, and he shall generally adhere to the following guidelines: an office that is created by law whose incumbent is an independent, high-level public official with responsibility to receive complaints from aggrieved persons against agencies, officials and employees of government, or who acts on his own motion and who has the power to investigate and recommend corrective action and to issue a report. Anyone who is denied status as a delegate or as an observer under this procedure shall have a right of appeal to the Credentials Committee which will be established, and their decision will be final. Incidentally, I should also say that Frank Flavin was present at the Meeting in Paris and he is with us today.

Dr. Nebenzahl has requested all International Ombudsmen to write to him if they have positive suggestions concerning guest speakers for the 1980 Conference. A decision was made with regard to an Ombudsman newsletter and this would, for the time being at least, take the form of a letter three or four times a year and more frequently as the date of the Second International Conference approaches, from the Chairman which would keep the members apprised of all details relating to the Conference as well as other information of interest to International Ombudsmen. I've consulted with Dr. Bernard Frank as we do not want to interfere in any way with the work that he is doing in providing such an excellent service to all Ombudsmen. And Dr. Frank has no objection to such a newsletter and conceded that it could supply a degree of continuity that, in fact, he cannot furnish. The need for this kind of communication link between the Ombudsmen around the world is fairly obvious I think, and I visualize a four or five-page mimeographed circular or at least even perhaps a printed one which would be sent out. I can also visualize that ultimately this information letter will come under the auspices of the World Ombudsman Institute.

With regard to the Ombudsman Institute, the Steering Committee Meeting in Paris endorsed the proposal from the

University of Alberta, at Edmonton, which, incidentally, was the only proposal we had at hand, although there were a number of others that indicated they might indeed send proposals to us. The Committee invited and would welcome, we agreed in Paris, the establishment of a parallel institution in Sweden, in due time. And it was made clear to us that, in fact, the government of Sweden at this time was not prepared to endorse such an institution and that perhaps we would be looking down the road about two years in this regard.

Additionally, the Committee would be pleased to receive and to consider in due time proposals designed especially to meet the needs of the third world in this field. We felt that we really ought not be telling the third world what they should have in this regard but that we should listen to what they had to say and indeed to pay attention to any requests that they would make. There is a member of the third world in the person of Judge Chomba on the International Steering Committee. Judge Chomba is no longer the Ombudsman in Zambia and his replacement on the Committee will be announced sometime within the next couple of months. Work has proceeded on the Institute in Alberta under the direction of Frank Jones, Peter Freeman and myself. I know that Mr. Freeman will be making a report to us after I have finished. But I do want to stress the emphasis that was placed by the Steering Committee on the need for a similar type Institute in Stockholm, as well as proposals designed especially to meet the needs of the third world in this field.

These will be matters about which we will be talking at the Second International Ombudsman Conference in 1980. I ought to also mention at this time Dr. Nebenzahl as the host of the next International Conference was appointed as Vice-Chairman of the International Ombudsmen Steering Committee. Incidentally, the Members of that Steering Committee are, or have been, Judge Chomba who will be replaced; Oliver Dixon; Justice Moti Tikaram, from the Southern Region; from the European Region, Frau Berger, Germany; Mr. Nielson, Denmark; and M. Paquet, from Paris; and from the North American Region, Frank Flavin; Mr. Maloney and myself as the Chairman.

As Mr. Freeman will be noting shortly, steps have been taken to ensure that the Institute at the University of Alberta will have an international flavour and this is very important. And it is certainly my desire to see that each region is represented. Consequently, after meeting with Frank Jones and Peter Freeman and others, I've written to several Ombudsmen and academics to determine whether they would be willing to stand as members of the Board of Directors. My hope is that the Institute will be functioning by the spring of 1978, and that seminars and the storage of materials from around the world will commence shortly. And I would ask the Ombudsmen

who are here today to make certain that their own Annual Report and material of this sort are sent in to the Institute and I think Peter will be saying more about this. We now must begin to build up what ultimately will be, must be, the best library on the Ombudsman's function, anywhere in the world. We are also considering the possibility of an Ombudsman-in-residence at the Institute for the period of mid-May to mid-November 1978, and additional information on this will be forthcoming.

I think that basically highlights our meetings in Paris. I might just say also that following the meetings in Paris, I was invited to go to Germany by Frau Berger, and spent a number of days there, both in Bonn and Berlin. I went on to Switzerland at the invitation of Dr. Vontobel, where I was present for the introduction in the Legislature there of the first, of the legislation for the first Canton, or Provincial Ombudsman in Switzerland. Following that I went to England, met with Sir Idwal Pugh and Baroness Serota, spent three days at the University of Nottingham with Professor Frank Stacey and others of the professors there, where I was able to meet some of the students and work with Frank Stacey on a book which will be released shortly, on aspects of North American Ombudsman offices. As Chairman of the International Ombudsmen's Steering Committee it was my privilege to renew acquaintances and certainly to make a number of new ones, particularly academics. Dr. Walter Haller in Switzerland and whom I hadn't met before. I also met the Welsh Ombudsman, Mr. Dafydd Jones-Williams, who had not attended our Conference in Edmonton, and I spent a day with him in Cardiff, and we were able to make a number of contacts that I think were profitable for the institute.

I hope that this can be the pattern during the next three years, where it may be possible to make a trip at least once a year to some area. And there are a number of invitations that have come, that may be useful to the Institute and helpful not only to myself but also to the institution as a whole. I think the Report of the First International Conference has now been received by every office. These were sent out about a month ago. Unfortunately they were delayed a number of times because we had to re-proofread them and finally I was very pleased with the end result as I hope you are. There are other additional copies available if any office wants them. I'm not sure how many were sent to each office but I think whatever you ordered have now been sent out. Now I would like to stop there. I'd be quite happy to answer any questions that you might have but I would also like to ask and introduce to you Professor Freeman from the University, the Faculty of Law, University of Alberta, and ask him if he would just say a word about the Institute.

PROFESSOR PETER FREEMAN
University of Alberta
Edmonton, Alberta

Thank you Dr. Ivany. Before I begin I'd like to thank Mr. Maloney and his staff for the opportunity to come down here and discuss with you the sort of beginning growth of the Institute which is an organization that we believe will be able to serve you as Ombudsmen both in Canada and throughout the world. I guess, aside from the fact that the University of Alberta offer was accepted, is the fact that we have received funding which I believe shall permit us to operate in a fashion and begin to show that we can do the kind of things you expect of us. The Alberta Law Foundation provided \$210,000 to the Insitute over three years: \$70,000 a year. The only condition is that funds be available. So we have the funding to begin to become a service oganization to Ombudsmen throughout the world. Again, I have appreciated the assistance and the hospitality of Mr. Maloney's staff and Ken Cavanagh. I've also appreciated the benefits of talking to Dr. Frank, who has indicated many areas in which the Institute and the International Bar Association in particular, Dr. Frank in cooperating to provide both information and assistance and anything else the Ombudsmen require.

We are in the process of developing the operational body, the directors, and we have made initial contacts throughout the world. Our belief is, at the moment, that the operational board be made up of representatives from the University of Alberta, the International Ombudsman Steering Committee, a Canadian Ombudsman, The International Bar Association Ombudsman Committee and other interested persons, both academics and Ombudsmen, throughout the world. We look on, initially, possibly a minimum board, nine, with a maximum of twelve. We are not at this moment looking to a full time Director, although that is definitely our plan. We think that until our funding enlarges and is more assured we would provide the administrators ourselves, or so that we could use the money for the benefit of the Ombudsmen as opposed to administrative costs.

I think I just might, quickly, highlight for you some of the objectives that we perceive for the Institute. There are seven or six really; the seventh one is a catchall. The objectives are to promote the concept of Ombudsman and to encourage its development throughout the world; to encourage and support research and study into the Office of the Ombudsman; to develop and operate educational programs for Ombudsman and other interested people; to collect, store and distribute information and research about the institution of the Ombudsman; to develop and operate programs enabling an exchange of information and experience between Ombudsmen throughout the world;

to provide scholarships, fellowships, grants and exchange privileges to individuals throughout the world to encourage the development, study and research into the Institution of the Ombudsman; and lastly, as such other matters that are necessary to fill the above objectives. Obviously this seventh one will be the one we cooperate under. So those are our general objectives and I would ask if there are any questions you want to put to me, or later on any suggestions you might wish to put forth that will better enable us to develop an organization, will be a service to you.

We aren't interested in developing an academic hierarchy, nor are we hooked on any personal ego trips. We are interested in developing an organization which will provide the kind of service you people think the Ombudsmen in Canada and throughout the world believe that they should have in order to improve and encourage the development of the institution itself. And that is our sole purpose in being. I would like to reiterate the comment by Dr. Ivany that we would like you voluntarily to provide us with all the information that you can within your terms of reference, so that we can further develop our resources and then provide you with the information you want.

We have reason to believe that Sir Guy Powles will be receptive to our invitation and so that we expect to have him available this summer. The Institute intends to publish a periodic newsletter along the lines of that of Dr. Frank. In this regard, Dr. Frank has certain information resources which we hope will be made available to us. We also see, both on site in Alberta, but also throughout the world, developing over the next year or two, continuing educational programs for Ombudsmen and their staff. But it is also hoped to be a clearing-house for information, and also an Institute which will enable us to provide information or assistance about the Institution so that we can put your expertise or someone else's expertise together with the people that require the assistance; and I think that we see ourselves as a facilitator in that context. We have some money, we have the will; all we require is your assistance and I hope we develop a worthy program in the future. Two years from now you will be able to say, you have done what we wanted you to do, give us some more. Thank you. (applause)

CHAIRMAN

KENN BARKER

Does anyone have any questions they would like to direct to Professor Freeman?

Or any question regarding the presentation by Dr. Ivany?

GEORGE W. MALTBY
Manitoba

Mr. Chairman, I've only got one comment on the Steering Committee Report. I note that the theme for the Conference is the Ombudsman - Mediator, Fighter, Reformer. It seems to me that the cardinal requirements of an Ombudsman is being omitted, that his role as an impartial investigator which should precede any of those three. This is my own personal comment.

CHAIRMAN

KENN BARKER

Thank you George Maltby. One question to Professor Freeman. Do we need a specific address or just University of Alberta in Edmonton?

PROFESSOR FREEMAN

The Ombudsman Institute, Faculty of Law, University of Alberta, Edmonton, C8N 1R7.

CHAIRMAN

KENN BARKER

Any other questions? Frank Flavin from Alaska.

FRANK FLAVIN
Ombudsman
Anchorage, Alaska

Yes, one question on the Board. Have the nine to twelve positions been allocated as far as how many to Ombudsmen, how many to other parties?

DR. RANDALL IVANY

Basically, yes. The Board of Directors would be structured as follows: Chairman and one Member, sorry, one Member of the International Ombudsman Steering Committee, a Canadian Ombudsman, Chairman of the Ombudsman Committee International Bar Association, three representatives from the University of Alberta, two being from the Faculty of Law and one being from the University at large. The Executive Director of the Institute would be recruited and, hopefully, from outside Canada because we want to maintain the international flavour. And this group, then, would select two other interna-

tional Ombudsmen, possibly nominated by the International Ombudsman Steering Committee. That would give us a total of nine. Now, Peter did say that it may be that it be desirable to go as high as twelve but for the moment I think we can assume there would be nine. Okay.

DR. HARRY D. SMITH
Nova Scotia

Could the position of Executive Director be filled by someone from within, rather than outside the country?

DR. RANDALL IVANY

We are not precluding that it could be a Canadian. What we are saying is that to certainly add to the international flavour of the Institute, it may well be that we would look outside the Country.

PROFESSOR FREEMAN

Excuse me Dr. Smith; maybe I can correct the separations I made. He would be resident where the Institute is. If this is an International Institute there might be the feeling that we had too large a North American, albeit, even Canadian organization or Commonwealth, and there might be some wisdom in having a person appointed from outside North America. But he would have to be resident, of course.

DR. HARRY SMITH

That clears it up for me, thank you very much.

CHAIRMAN

KENN BARKER

Any other questions?

ARTHUR MALONEY
Ontario

Could I just ask Dr. Ivany a question? The responsibility for supervising the activities of the International Steering Committee, in particular the Chairman, has rested

very largely on you, and you devoted an immense amount of time to the manifold responsibilities of this department as imposed upon you. You also, I think, spent an awful lot of money to discharge these responsibilities. It is of inestimable value to all of us to have this interchange of ideas with each other at conferences held every three or four years, to share in the benefits of the central funneling station that was contemplated. It's something that is a great benefit to all of us. I believe a suggestion emanated out of the Steering Committee meeting in Paris, that we all contribute to the cost of the operation that you have so far been bearing almost entirely on your own. I think we agreed in Paris to make varying contributions, depending on the size of our jurisdiction. If I remember rightly we agreed and have already paid you the sum of \$350 to be applied to your operating expenses. Have you had any success in the returns from some of the other jurisdictions?

DR. RANDALL IVANY

Yes, as a matter of fact I've got a cheque right here from the Province of Quebec. I've received cheques from most of Canada. The minutes of the Paris meeting will now have been sent out and I'm hoping that within the next few months we will be hearing from overseas as well. This will amount to a couple of thousand dollars a year which will be a great help.

ARTHUR MALONEY

As you have an enormous amount of correspondence and secretarial work.

KENN BARKER

If there are no other matters of discussion on the International Conference, I would like to move on to the next item on our agenda and that is the location of the 1978 National Conference. Does anyone wish to speak to this?

GEORGE MALTBY

At the First International Conference held in Edmonton in September 1976, Mr. Garde Gardom, the Attorney-General for the Province of British Columbia, extended an invitation that the next Conference of Canadian Provincial Ombudsmen be held in the Province of British Columbia, but I think that was based on the assumption that there would have been an appointment of

an Ombudsman for that Province by now. In the absence of Mr. Gardom I've been giving this matter some thought. Before I throw my hat in, I don't want to pre-empt any ideas that British Columbia may have. Do you come here with any authority to invite us to British Columbia, sir?

RICHARD VOGEL
Deputy Attorney-General
British Columbia

It's very good of you to give me an opportunity to say no. I think I should check with Mr. Gardom and see what the situation is. I just had time to catch the aircraft to get here and I think it would be a simple matter for me to call him and see what the situation is in respect to the appointment. I don't expect an appointment to be made before the end of February. I think it would not be in the interest of the National Association to have you come to British Columbia, while we would very much like to have you do that, until the man has had a year in the saddle.

GEORGE MALTBY

That is understood, Mr. Chairman. I just wanted to clarify that. In which case, then, though I have no authority from the Provincial Government of Manitoba I will tentatively invite the Conference to Winnipeg for 1978. There is an election coming up on the 11th or the 12th of October in Manitoba so I should wait to obtain the approval of the government which will be sometime after the 12th of October. I will, however, tentatively invite the Conference to be held in Winnipeg in late August or September of 1978.

CHAIRMAN

KENN BARKER

Is there any other province that wishes to throw in their hat with George Maltby? There seem to be no other offers.

George Maltby has indicated that Manitoba would be most willing to receive us. Are there any items that anyone would like to suggest to George for that meeting for 1978?

ARTHUR MALONEY

George has explained to us that he would like Manitoba to

host the Conference. This must be subject to the approval of his won government. I did exactly the same thing. In Edmonton I undertook to host the National Conference, provided checking first with the Premier, that he would approve the budgetary items that would be required to cover the cost of this and he did subsequently approve it. Could we not appoint a Committee of three to whom to refer the matter in the event George finds there is any problem with respect to the support of his government for his invitation?

GEORGE MALTBY

Well, Mr. Chairman, Arthur, I think in any event, I would appreciate the support of a Steering Committee with regards to the Conference Program, in any event and we could keep the matter of cost in mind. I agree with you, probably we should consider at this point, a Steering Committee, a small Steering Committee that could get together probably either late this year or early 78.

ARTHUR MALONEY

My idea of a Steering Committee wouldn't necessarily have to be Ombudsmen. It could be members of our respective staff.

GEORGE MALTBY

I wonder Arthur, whether it wouldn't be more appropriate for it to be Ombudsmen?

ARTHUR MALONEY

Well, then, I move the Steering Committee of three of our members be set up to assist George Maltby in his aspiration to be host, and to give further assistance to him that he might ask of them in the event his invitation can be carried through. And I move that that Steering Committee be appointed by George Maltby, himself, because he is going to be the host, he has the best idea of which of his colleagues could give him the greatest measure of assistance.

DR. HARRY SMITH

Seconded the motion.

CHAIRMAN

KENN BARKER

The motion has been moved by Ontario, seconded by Nova Scotia that the Steering Committee of three be appointed by George Maltby to assist him in the formation of his program and that George notify us who they will be.

GEORGE MALTBY

Then let's get it set right now if we can.

ARTHUR MALONEY

Well, I think you should give yourself an opportunity to confer with us to see which ones of us are available or not available.

GEORGE MALTBY

Okay.

ALEX B. WEIR
Alberta

Mr. Chairman, I'm wondering if the motion could be amended every so slightly pending the unlikely possibility that it may not be possible to go ahead. Possibly the same Committee could then arrange for some other Ombudsman to be that host.

ARTHUR MALONEY

I'm content that my motion be expanded to include the power in the Steering Committee to determine the site of the next Conference in the event Manitoba is not available.

DR. HARRY SMITH

Seconds.

CHAIRMAN

KENN BARKER

It's been seconded by Dr. Smith. Seconded as amended. Are there no amendments other than we have heard? Would those in favour of the motion as seconded please raise their right hand. Motion is carried.

GEORGE MALTBY

Before we leave that Mr. Chairman, have we some date in mind? We have them in early September most times. So shall we leave that go for the time being?

CHAIRMAN

KENN BARKER

Are there any suggestions as to approximate time?

ARTHUR MALONEY

We had a discussion, Ambrose Peddle and I, a few days ago. I think it was Ambrose who indicated that he thought the latter part of August rather than September as an appropriate time.

Mr. Chairman, would it be better to leave this to the Committee because we have the Canadian Bar Conference and the International Bar will be meeting as well next year. It meets every two years. Perhaps it could be left with the Committee and the Committee could make the announcement later. There may be some other conflicts that none of us can think of at the moment.

GEORGE MALTBY

Yes, Mr. Chairman, we should nail down what is not convenient because of other Conferences, before we set our own date.

ARTHUR MALONEY

So we are agreed that the Steering Committee among other responsibilities should decide, after consultation, not only with its members but with us, informally, what would be the most appropriate time period and dates for the Conference.

DR. RANDALL IVANY

I want to raise a point in connection with the Conference which, perhaps, we ought to deal with because it's somewhat open-ended at the moment. We are having, year by year, more and more of the Ombudsmen who are becoming ex-Ombudsmen, for a variety of reasons - either going to other jobs or retiring. At this Conference we have Mr. Boychuk and we had invited Mr. McClellan. Both ex-Ombudsmen. And I'm very much in favour of that. We now have Keith Spicer, who has been replaced as the Commissioner. Inger Hansen will shortly leave her job for a new one. And I would be very much in favour of extending to these people the opportunity to attend future conferences. But I think that matter ought to be discussed and clarified at this meeting. I simply raised it because I don't think that kind of a decision can be left in the air without some sort of recommendation being made. I'd like to hear if there are any other comments.

BRIAN GOODMAN
Ontario

Mr. Chairman, Brian Goodman, Ontario. I should say that the Ontario committee organizing this Conference extended an invitation to every living Canadian former Ombudsman, including Dr. Marceau. I just wanted to make that clear.

DR. RANDALL IVANY

Before we leave, I know that Arthur arranged for the Assistants to the provincial Ombudsmen to meet in his board-room and have a session on the Sunday preceding the Conference proper, and from my talks with the Assistants to the Ombudsmen, I understand they appreciated the opportunity to get together in an informal huddle for 2 or 3 hours and compare experiences and how best they can support their Ombudsman and their discussions were very fruitful and I just wanted to place on record that this should form a permanent feature of future provincial Ombudsmen conferences. I think it's important that they have an opportunity to meet separately as well as the Ombudsmen themselves meet separately, in addition to the open hearing.

DR. HARRY SMITH

Mr. Chairman, I think it's very important to have the Assistants there, the backup staff for a whole day in conference. If we begin our Conference on Tuesday, it means that that staff people are going to be there all day Monday, not

so squeezed into a Sunday morning, but given a whole day. If we start on Monday, they'd be meeting all day Sunday, like a foreign ministers' meeting before the Prime Ministers. I don't know if that analogy is right, but these are the people that are going to be doing the work in our absence, and we shouldn't give them any sort of a side seat or back seat. I know we don't intend that, and we should give them a full day before our main meetings begin and they can raise things into the meetings from that.

CHAIRMAN

KENN BARKER

Does anyone feel that's necessary to be made a motion or just an expression of view of the group something that would be complied with on an automatic basis.

REGINALD WEBB
Manitoba

With regards to the proposal by Dr. Smith that they devote a whole day to it, I think perhaps I should work out, with Mr. Maltby and the other Assistants, just how much time we think we are going to need and work that in with the general schedule. It may not necessarily take a whole day.

ARTHUR MALONEY

I would like to hear Brian Goodman on that.

BRIAN GOODMAN

Mr. Chairman, I chaired the meeting of Assistants to Ombudsmen on Sunday and we had a very useful meeting. I believe Kenn Barker will be reporting the results of that meeting. I can simply say that we met for possibly four hours and we found that that was certainly sufficient time to enable us to canvass the issues we felt should be discussed by Assistants to Ombudsmen, to permit us to better assist you. I agree with what Mr. Webb has said that it should be left up to the Conference Chairman to decide how much time should be devoted to such a meeting.

CHAIRMAN

KENN BARKER

Anyone else wish to speak on that?

DR. LUCE PATENAUDE
Quebec

Statement in French (inaudible). Substance of comments translated by Gilles Morin follows.

GILLES MORIN
Ontario

Basically what Dr. Patenaude says is that the responsibility should rest with the hosting Province to decide the people that should be invited, and the budget, because at a later date it might happen that the hosting Province would be responsible for so many obligations with the problem that the budget in each Province is not always the same. In other words she does not agree with the idea of having all the Provinces suggesting the sort of a policy to be established for future conferences.

GEORGE MALTBY

All that I'm requesting is some support with regard to the drawing up of a program. I would basically want to consult with one Ombudsman from the east and one from the west. I wouldn't like to draw up a program of keynote speakers, panel discussions, that kind of thing without taking into consideration the ideas that some of my colleagues have in other Provinces. For example, I have one idea now - I would like a keynote speaker to address us on administrative law as it relates to the Ombudsman. Now some other Ombudsmen may have some suggestions, topics for discussion. This really is my understanding of the Steering Committee.

DR. LUCE PATENAUDE

Statement in French (inaudible). Substance of comments translated by Gilles Morin follows.

GILLES MORIN
Ontario

Dr. Patenaude feels that if such is the case that there be plenty of freedom to bring in ideas so that the Ombudsman would not be obligated. There is no reason to have a motion then.

GEORGE MALTBY

Mr. Chairman, it is obvious that suggestions from others are welcome but they are not a requirement. In addition, the host wouldn't have to carry them out.

GILLES MORIN

Would it be fair to say that the hosting Province would always have the first word, or the last word, I should say.

KENN BARKER

Do we have any more topics of discussion?

ELLEN ADAMS
Ontario

May I return briefly to the suggestion about the Assistants meeting prior to the Conference. We found it extremely useful. I think we found it very useful to hold it actually prior to the actual Ombudsman Conference taking place. If it were to become part of the program within the Conference, I think we would be torn between attending the Conference and attending our own staff conference. Which brings me to another item. It seems to me that out of our own staff meeting there may come suggestions or resolutions which we would like to present to the Ombudsmen Conference Business Meeting. And I think it would be useful to have, almost as an automatic item on the agenda for the Ombudsmen Business Meeting, a report if there is one from the staff conference. Certainly we found the four hours very, very useful. I think all of us felt we would like to continue a similar meeting in future.

PAUL F. WOOD
Alberta

If I could add to what Ellen has just stated. I don't think we need get hung up with whether we are missing something while we're meeting. It should be quite simple. At the beginning of the Conference the Ombudsmen who normally meet in private, could meet in private, and the Assistants could meet in private. There

need be no conflict.

GORDON EARLE
Halifax

I think we are all professional enough to recognize that we perform different functions than the Ombudsmen, but I think in practice the Ombudsmen and their Assistants work together as a team, and I hate to see a constant emphasis on difference. You know, staff as opposed to Ombudsmen.

CHAIRMAN

KENN BARKER

Thank you Gordon. I'm afraid I must move us on, ladies and gentlemen. We have less than half an hour left. There are several items that I'm sure participants wish to speak to. I would like to make an announcement at this time as an informational item on the agenda. Karl Friedmann spoke to me and asked me to tell the offices involved that he has decided to discontinue the Ombudsmen clients' survey.

GEORGE MALTBY

I was a witness to that, Mr. Chairman. He said to me that because of the lack of response from some jurisdictions and definite negative answers and half-hearted responses from others, he didn't feel that he wished to pursue it anymore. He didn't feel he was getting the support of the Provincial Ombudsmen to do a survey of clients' attitudes towards Ombudsmen.

CHAIRMAN

KENN BARKER

Very good. Still on the item of conferences, Frank Flavin, the Ombudsman for the State of Alaska, would wish to address the gathering on the possibility of a North American Ombudsman Association.

FRANK FLAVIN
Alaska

The United States Ombudsmen formed an Association - a non-profit corporation - in August. We have a Board of Directors.

Basic membership in the association is determined by the A.B.A. standards, which most of you are familiar with. We had a new Chairperson who succeeded me, Bonnie Z. Macaulay, the Ombudsman for Dayton. My job is International Liaison Officer for the Steering Committee. That's why I am here.

Two things that the United States Conference directed me to do, was - (1) contact the Canadian Ombudsmen in regard to opening up explorations of a possible North American Association or some sort of an Association, informal or formal, between the United States and Canadian Ombudsmen. Probably also we should talk about including Trinidad and Jamaica. Perhaps if someone could be delegated to meet with me over the next year, so we could have a concrete proposal before this body next year, that would be helpful.

The second thing is the possibility of before the World Conference in 1980 - that is that in 1979 - we hold a joint North American Conference with North American Ombudsmen. And perhaps we could get some sort of a joint proposal between British Columbia and Alaska at that time or a joint Conference in the western part of the country.

That's the two things. One, opening up an exploration of the joint association, be it formal or informal, between the United States and Canada, and two, a joint Conference in 1979 in the west.

CHAIRMAN

KENN BARKER

Frank has put forward two ideas. I wonder if we should have a very short discussion on the first one, the North American Ombudsman Association. Does anyone have any feelings on it? I assume that no one had heard of this before, and this is rather short notice, but, does anyone wish to speak?

ARTHUR MALONEY

Glenn Hainey and I attended the American Conference in Seattle, to which Frank Flavin referred. I recall that I was very supportive of the idea that there be a North American Association of Ombudsmen. I think it would be a very valuable aid to all of us in Canada to meet with our State counterparts and also to meet with other Ombudsmen who are not Legislative Ombudsmen in the strict sense, but of which there are a large number in the United States. I thought too, it would be beneficial to the Ombudsman movement generally in that this might assist our American colleagues to further their objective to expand the Ombudsman movement around the United States.

CHAIRMAN

KENN BARKER

Anyone else?

DR. RANDALL IVANY

Mr. Chairman, I'm afraid that I'm going to speak against the proposal. In the first place I don't think that the Canadian Legislative Ombudsmen, Provincial Ombudsmen and the American Ombudsmen - of which there are great numbers, and only four of the Legislative nature, that we would recognize as such - necessarily have that much in common. I think also that we have a commitment to the International Ombudsman, World Ombudsman proposal now and I think we have a great deal of work to do on that. I'm just not convinced that we need another federation or association. One of the dangers that I see here is that we are going to end up in a great number of meetings. I think if we are going to at least discuss this at all, it needs perhaps some papers prepared on it and I would be more in favour of tabling the discussion on this until next year and making it an item on the agenda, rather than make a decision here on such very short notice.

CHAIRMAN

KENN BARKER

Thank you Dr. Ivany. Did you expect a decision, Frank, really?

FRANK FLAVIN
Alaska

No, I didn't expect a decision. I guess what I was hoping for was, perhaps someone whom I could work with, if there was any interest in the group at all, to come up with whatever the alternatives would be. Perhaps that's all we're talking about, perhaps every three years getting together in a joint conference or something like that. But, just to have some one person I could focus on so we could have some sort of dialogue going in the interim year.

ARTHUR MALONEY

Dr. Ivany is so much closer to you than the rest of us
re geographically.....

CHAIRMAN

KENN BARKER

In the interim would it be possible for you to send a little synopsis up to the Ombudsmen in Canada so that they have a chance to study it at greater length?

FRANK FLAVIN

That's a possibility. I don't think it's any great formalized thing that we're talking about.

ARTHUR MALONEY

If we are going to have a useful discussion next year, there should be some kind of liaison between us and Frank Flavin. And I'm serious when I say, Randall, you're closer to Alaska than the rest of us.

DR. RANDALL IVANY

As long as Frank will come to Alberta, yes. I wouldn't like to enter into anything of that sort with any proposal that we have a joint meeting in 1979. I think that is premature.

ARTHUR MALONEY

No, you have a proposal to present to us at the very next meeting as to what you think the course is that the Canadian Ombudsmen ought to follow in relation to a suggestion.

CHAIRMAN

KENN BARKER

Is there any other comment? Dr. Frank.

DR. BERNARD FRANK
Pennsylvania

It would seem to me that instead of being that specific on the subject, that what probably should be on the agenda is the conclusion that there should be some relationship between the Canadian Ombudsmen and the American Ombudsmen and it is the duty of some type of sub-committee to determine what form that relationship should take. It isn't necessarily so that

there be a joint meeting; it isn't necessarily so there be a combined organization. But, it seems to be necessary that there should be some form of cooperation and it would seem to me premature to first start with the point that there should be a joint meeting and then discuss later whether there should be a relationship. So I think, if I may suggest to this group, that a committee, sub-committee, liaison group, should first determine whether there should be a relationship and secondly, what form that should take without, at this time, at this meeting, being as specific as the discussion that I heard.

CHAIRMAN

KENN BARKER

Thank you Dr. Frank. Any remarks on Dr. Frank's suggestion? Frank.

FRANK FLAVIN

One brief thing. What I had hoped to do was start a dialogue on this. If we are going to have any kind of concrete proposals next year, and there's a possibility at all of having a joint Conference in '79, obviously some sort of discussion is going to have to go on in the intervening year between now and 1978. Because certainly next year's Conference is not the time to start talking about that dialogue. It will be too late then, so if there is going to be a dialogue, it is going to have to be in the interim. I guess the offer is just one to start a dialogue.

KENN BARKER

Any other Ombudsmen have a suggestion how this should be done?

ARTHUR MALONEY

I still think the easiest and most economic, most expeditious way, is for one of our group to start the dialogue on our behalf with Frank Flavin and we should, from the point of view of economy, pick the one of us who is closest to Alaska. That's really what I was suggesting I guess.

DR. RANDALL IVANY

I see nothing wrong with that, Arthur, and I would be happy to do it. Happy to go to Alaska or have Frank come down. As long as we're not under any delusions that we may be planning a joint Conference in 1979.

ARTHUR MALONEY

That is understood.

CHAIRMAN

KENN BARKER

May I move us on?

DR. RANDALL IVANY

We agree then that Frank and I should meet. Yes, fine.

CHAIRMAN

KENN BARKER

It is agreed then that Frank and Randall Ivany should meet? Agreed?

Dr. Frank mentioned a matter that he is about to embark on regarding solicitors and a solicitor list. Would you care to mention that Dr. Frank?

DR. BERNARD FRANK

Yes. The International Bar Association has a great number of members from Canada, and that could be very helpful with respect to the field of litigation and court action. Of course, as you know, one step that was taken last year by the Ombudsman Committee of the International Bar Association was to prepare a report on court cases involving all of the Ombudsmen throughout the world.

The second step we're going to take is that a special sub-committee of the Ombudsman Committee of the I.B.A. would prepare a background brief which can be used in litigation, to educate judges on the Ombudsman function. And that special sub-committee will be headed by Charles Ferris from New Brunswick. The other members of the committee are Brian Goodman, Ontario, and Gordon Mayer, Saskatchewan.

Now, that all leads up to the general subject that we think this whole area of litigation is a very dangerous field, dangerous to the Ombudsmen because a case in one Province, although I assume not binding on the court in another Province, nevertheless turns up as a precedent or reference even though it's not binding. So that the concept we're working on is that an Ombudsman in one Province really ought to get into a consultation with other Ombudsmen before litigation is instituted because he may end up with an opinion which is adverse, not only to his own jurisdiction. So that what one Ombudsman does anywhere is going to create a ripple effect.

To try to help that situation we are asking each of the Ombudsmen to have their Legal Officers, full time or part time, or if you use outside counsel, to join the I.B.A. Ombudsman Committee. There is a relatively slight charge. I think it's about \$15 a year. And then use that I.B.A. Committee as a basis for working out this problem of litigation.

Consultation before litigation is not an absolute requirement, but the opportunity would be afforded to consult with solicitors throughout the world through the Ombudsman Committee with respect to the preparation of briefs for litigation and with respect to analysis of questions. We do have solicitors of several of the Provinces on our Committee but we would like to request the cooperation of the Provincial Ombudsmen, that they somehow get their solicitors, as I say, whether part time, full time or outside counsel, to join the International Bar Association.

CHAIRMAN

KENN BARKER

Thank you Dr. Frank.

JOSEPH E. BERUBE
New Brunswick

As a follow-up to what Dr. Frank has said, in fact I would like to move the following resolution:

That a Canadian Legislative Ombudsman, and/or counsel preparatory to any judicial review of his or her legislation, be encouraged to consult with his or her colleagues with a view to ensuring that the fullest possible hearing is accorded in such a review.

CHAIRMAN

KENN BARKER

Did everyone hear the resolution by Mr. Berube? I will repeat the resolution.

Resolved that a Canadian Legislative Ombudsman and/or counsel preparatory to any judicial review of his or her legislation, be encouraged to consult with his or her colleagues with a view to ensuring that the fullest possible hearing is afforded in such a review.

Do we have a seconder? Dr. Ivany seconds, we have it moved and seconded. Do you wish to speak to the motion?

DR. RANDALL IVANY

For clarification, would it be understood that when you used the word colleagues, you're saying colleagues within Canada. I assume that's what you're meaning but just for clarification, because obviously you have colleagues all over the world.

JOSEPH BERUBE

Well, to clarify, I should state Canadian colleagues or colleagues in Canada. That was the intent.

ARTHUR MALONEY

I just wonder if we have the right to take it upon ourselves to restrict our actions, insofar as the institution of legal proceedings is concerned, by saddling ourselves with some sort of responsibility to consult our colleagues. I question whether we have the right to do that. I realize your motion simply says that we are encouraged to do it but I've never initiated legal proceedings so that problem has not arisen in my case in over two and a half years. But I would worry to think that there was some obligation imposed upon me by this resolution to consult with you people before I undertook such proceedings. I think I might leave myself open to criticism. I think I support Dr. Frank's idea that we join the Ombudsman Committee of the International Bar Association but not for the reason he gives. I would think we would be open to criticism if we put that kind of fetter around ourselves.

ALEX WEIR

Mr. Chairman, the best example is the situation in Saskatchewan where the R.C.M.P. was declared outside the jurisdiction of the Ombudsman of that Province and yet that decision has affected all of us - it has affected us in a very definite way. And had we known previously that this matter was going to be before the courts we would have made some effort to be present or have representation there.

ARTHUR MALONEY

I don't think you would have had status before the court. And isn't it better that issues like this be clarified in the courts so if the decision of the court is contrary to what we feel it ought to be we can seek appropriate amendments to our legislation. I don't think we should try and discourage the resolution of legal problems because we're afraid the decision might be contrary to our own wishes in respect to what our legislation ought to be. We should find out what is the law, what the courts say the law is, and then seek to change the law through our own legislation if we feel the decision contrary to our view.

ALEX WEIR

Mr. Maloney, the Assistant's meeting seemed to unanimously feel that there should be a much closer liaison, much closer communication links. It wasn't so much the thought that if Ontario had a decision they wished to take to the court or were forced to take to court, that all the other Provinces would be there in the court-room at the same time. But another example of another court case was raised where one of the Ombudsmen went to court on a very narrow point and lo-and-behold the final decision came down deciding on another issue that was far more general, far more devastating. It was with the thought that perhaps there should be the encouragement, not requirement, but encouragement for all of the Canadian Ombudsmen to consult, and again I stress encouragement, not necessity. There may be some reason why it would not be a good idea in a particular case, but we basically felt, among the Assistants, that it would be a fine thing to encourage more cooperation and perhaps particularly for those Provinces who do not have full time solicitors on staff - where a solicitor may be retained who does not have the same expertise as say, an Ombudsman who has support staff, one or more lawyers.

ARTHUR MALONEY

I think we have raised a problem beyond our ability to resolve in the next three minutes.

Can I suggest that this matter of Dr. Frank's recommendation and Mr. Bérubé's resolution be referred to the Steering Committee to report to us at our next conference with their recommendation to us? Because I think it requires a getting together of people to discuss it. It's got broad ramifications as I see it, and I move therefore that the matter raised by Dr. Frank and the resolution of Joseph Bérubé be referred to the Steering Committee to be set up to report back to us with recommendations at our next conference.

GEORGE MALTBY

I'll second that.

CHAIRMAN

KENN BARKER

It is moved that the matter be tabled, seconded by George Maltby. All in favour raise their right hand please? Carried. Ladies and gentlemen our time is running out. I wonder if there would be any possibility of having a short meeting on Friday, before the conclusion?

ARTHUR MALONEY

I think after the luncheon on Friday, we could meet again.

CHAIRMAN

KENN BARKER

Just to finish off what we have done here.

ARTHUR MALONEY

Could I make the suggestion that item 3 on the agenda "suggested items for 1978 meeting agenda" also be referred to your Steering Committee and George Maltby? Again, I think that's the best forum in which to determine the items we will be discussing at our next conference. Will someone be prepared to second that?

CHAIRMAN

KENN BARKER

Who will second that? Seconded by Harry Smith, all in favour?

ARTHUR MALONEY

So that would leave for discussion on Friday after the luncheon the last item "possible staff exchange program". I'd like to see us address ourselves to that before we break up.

CHAIRMAN

KENN BARKER

Ladies and gentlemen. Thank you very much for your attendance. The buses are just about ready to leave. I hereby declare this portion of the meeting closed, to be adjourned until Friday after the luncheon meeting. Thank you again.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 15, 1977

Morning Session

"THE OMBUDSMAN AND THE MEDIA"

CONFERENCE IS BROUGHT TO ORDER

GLENN HAINEY

Executive Assistant to the Office of the Ombudsman of Ontario

Could we bring the session to order. My name is Glenn Hainey and I'm the session chairman this morning. I'd like to welcome everybody back to Toronto and the Sheraton Centre Hotel. This morning our panel will be discussing the Ombudsman and the Media, and the chairman of our panel this morning is Mr. Ken Cavanagh, the Director of Communications in the Ontario Office of the Ombudsman. So I'd like to turn it over to Ken now.

PANEL CHAIRMAN

KEN CAVANAGH

Director of Communications
Ombudsman of Ontario

Good Morning. As the chairman this morning, I might just say to begin that we have, as you can see and as you've heard and as you've seen in the material that's been distributed, five of the top communicators of all levels in Canada. So I think it's worthwhile noting at this time that there isn't a speech among the five of them up here. We have no texts for anybody. It's just going to be notes and people are going to speak directly from the soul and directly from the heart, to our subject this morning.

And I think in introducing, there's no way you need a speech from me except, I might point out, as this panel was drawn, the reason for the choice of our panelists this morning. There are many of them but the major reasons we had - on an organizing committee when we were establishing this panel - was that we have of course Claude Ryan, the publisher of Le Devoir, who has been a long-time representative of the individual and his rights at any and all levels of society and might now - I'd think without starting a great long political discussion - be considered quite possibly a representative of a nation's rights within a nation. The Honourable Judy LaMarsh is the Honourable Judy LaMarsh, with a background in federal politics, all the media, starring roles and I mean starring in the best sense in that her work and her contribution and her involvement and her devotion to the individual's rights to know - the gadfly role - which covers a number of subjects we have covered this whole week as well as this morning's panelist - she is here, and of course was just the author and Chairman of the recent Ontario Commission on Violence in the Media which had its own recommendations which we'll probably be discussing this morning.

Cameron Smith from the Editorial Board of the Globe and Mail. The Globe and Mail, I think we should put out on the table here right now, will be discussed this morning in that it is not a member of the Ontario Press Council. The Toronto Star which is represented by another panelist to whom I will refer in just a moment is of course represented there. We have two conflicting points of view there, I think, about the value, the role, the function of a press council as it has developed, as it could develop, and as that press council and its role reflects upon - can I say similar role - I don't know, maybe that's too much, but another role of another newspaper or media Ombudsman as it has been proposed by Judy LaMarsh. Cameron Smith from the Globe and Mail.

Robert Cooper is here as a practising functioning media Ombudsman. Our only national media Ombudsman of course on CBC television and his role in what he has brought to this whole question. And as I mentioned, Borden Spears is here as Senior Editor and Ombudsman for the Toronto Star newspaper. And they use a title in some papers in other parts of the world, and in Sweden, I understand, it has official strength to it - an Editor of Responsibility. When the Ombudsman, the Swedish press Ombudsman, has a complaint against the coverage that a newspaper has presented, he takes it to the man who is responsible the Editor of Responsibility. And in my own mind, and in fact in some letters to Borden I have referred to him as the Editor of Responsibility at the Toronto Star. If that's not right, I hope you'll clear that up today, Borden.

The one thing I'd like to say before we start and I'd like to get to our panelists because we have a lot to say up here, and I'd like to hear a lot from you people too, is that we have a story here - and I'm not going to mention which newspaper it's from, because it happens to be the Toronto Star, but you may have seen this story just a week or so ago. It was on page B6 - top of the page: Ex-Mountie Ombudsman for Indians. Now I'd just like to interject this one point at this time, that there is that word Ombudsman again. Now mind you, the headline writer in the Star has not capitalized it, but this is a point I've heard the Ombudsman discussing. For instance it was mentioned I think relative to the possible co-operation between American and Canadian Ombudsmen at the session held yesterday the business session, at the Mohawk Inn. And though we did not get into detail about this, I think it was Dr. Ivany who was raising the general point that there are various types, sizes, sorts, colours, and shapes, of Ombudsman responsibilities and differences between those responsibilities makes it very difficult to have any cooperative discussion or meeting of the minds on a lot of basic things. One use of the word Ombudsman, which in Ombudsman circles we mention quite regularly, is the Ombudsman for the shoe store in Dallas. The Ombudsman for Indians happens

to be Jack Ramsey, a former RCMP man who has been appointed by Harold Cardinal. It's just developing and we have no track record yet. But reporting directly to Mr. Cardinal he will - Mr. Ramsey that is - "investigate violation of treaty rights, complaints of police harrassment, handle liaison with law enforcement agencies". Well that is a long way from an Ombudsman's role no matter how you look at it and no matter how the job developes the role. I don't see this officer, simply because of his position, the way he's been appointed and the way he will function as being anywhere close to a legislative Ombudsman as we understand it within the Ombudsman business. I guess what I'm getting around to is the use of that word Ombudsman all the time. Robert Cooper may even take offence at what I'm saying when I say that the CBC Ombudsman - we're caught in the dilemma, and I certainly am as a, I'm not sure if it's a working communications officer for a practising Ombudsman or a practising communications officer for a working Ombudsman - but where do we stop and start with the word "Ombudsman" itself. We use it and on the one hand the Ombudsman of Ontario and myself and our office as a whole, and I think many other offices in the country, are very pleased to see much overall good and general and continuing publicity about Ombudsmen and an Ombudsman role. But of course Bob Cooper as he will be the first to admit is not a legislative Ombudsman and his only real field of action and therefore field of power, and responsibility, is television and the public and publicity. It's a long way from a legislative Ombudsman if I can get back to that phrase again. So on the one hand, I'm in a quandary which I'm obviously expressing and you're realizing right now because on the one hand we have an Ombudsman being publicized - the general philosophy being publicized - and that's good. But at the same time all that publicity is leading to, I think, a basic confusion as to Ombudsman itself. If we were to add up the pluses and minuses I would certainly go with the situation and that we have right now and with all the people being referred to as Ombudsmen. I think it's just generally good. We'll sort out the details later on if we can. I might just present a problem to the panel and to the conference at this time. If you can come up with another word that would help us somehow delineate the difference between Ombudsmanii, or whatever you want to call it, as they have developed over the years, keeping in mind that there is this poor guy I guess working very hard in the shoe store in Dallas and everybody is jumping on him all over the place, but he is confusing things.

So now I have confused things too could we move to the panel and first of all Claude Ryan from Le Devoir.

PANELIST

CLAUDE RYAN

Publisher, Le Devoir, Montreal

Monsieur le Président, mes collègues du panel, mesdames et messieurs. Je pense que le sujet que l'on nous invite à discuter aujourd'hui est très intéressant pour la presse. C'est un sujet complexe parce que l'institution de l'Ombudsman est une institution nouvelle qui doit s'insérer dans le système peu à peu et au sujet de laquelle il serait difficile de faire une théorie générale à ce moment encore relativement jeune de son développement. C'est pourquoi ce matin, je vous soumettrai quelques observations qui dérivent surtout d'expériences qu'il m'a été donné d'observer dans la province de Québec.

(Mr. Chairman, fellow panelists, ladies and gentlemen. I think that the subject which we have been invited to discuss today is of considerable interest for the press. It is a complicated subject because the institution of the Ombudsman is a new one which needs time to be assimilated into the system and for which, at least at this relatively early stage of its development, it would be difficult to come up with a general theory. This is why this morning I will merely present you with some observations which are basically the result of my experiences and observations in the province of Québec.)

Mr. Chairman, the Ombudsman is a relatively novel institution in our system of government. I don't think it has been fully integrated yet. It's going to be the fruit of a long process of growth and we're all approaching this problem with a lot of hesitation because it's difficult to see it in a really functional perspective. From my standpoint for instance, the press is perhaps the most important Ombudsman in any democratic society. And with all the other built-in recourses that you have at different levels of our system, it's not easy to see clearly what exact role remains to the Ombudsman, once he's appointed.

To define the relationship between the Ombudsman and the media is also difficult for another reason. You can have different types of Ombudsmen. You can have the flamboyant, the outspoken type, the enterprising type. You have the quieter type also. The man or woman who is more on the receptive side of his job will deal conscientiously with the cases which come to him and will not make any special steps in order to initiate action in areas which are not brought to his attention through the formal channels.

According to whether the Ombudsman belongs to one type or another, his relationship to the press is obviously going to be very different. If you have an enterprising Ombudsman, he will immediately realize that he badly needs the co-operation of the press in order to achieve his objectives and he will see to it

that direct rapport is established and maintained with the press. If you have a quieter type of person, he can do an excellent job but he will not be after the press. He will do what is expected of him in terms, for instance, of publishing his annual report, putting it at the disposal of the press but he will not go to the press constantly in order to apprise people of the press of the problems which he may have in the discharge of his role.

At this early stage in the development of the institution, it's very difficult to pass judgment on whether one method or one style is preferable to the other. But what I would like to do this morning is submit to you a few observations derived, as I said at the outset of my remarks, from the experience that we've had in Quebec and, I should say, from my knowledge and understanding, which remains limited to the experience we've had in Quebec.

I have four or five observations here. First, I think the Office of the Ombudsman has not yet really imposed its presence in the public arena in my province. The Ombudsman has been until now a rather low-profile officer in the province. I think we've had two very conscientious holders of the office, but they have not yet grown to become what I would call persons who are feared by officialdom. And I think that's one characteristic that must develop in the Ombudsman with time. If he's not really feared by officialdom, I think there's a dimension missing in the performance of the job. In the province of Quebec I think the Ombudsman, until now, has been perhaps a little too much on the gentle and the polite side. The media naturally prefer aggressive and outspoken types if only for the greater pleasure it provides when the moment comes to get rid of them. But I think in this particular job, it's important that a strong public presence be established by the holder of the office if the office is to fulfill the expectations which were raised upon its creation. Two, in the province of Quebec the only public manifestation that we've had of the Ombudsman has been, to all practical purposes, his annual report to the National Assembly. There have been a few special occurrences. Last year for instance, Miss Patenaude was called upon to do a study of the children who had run into difficulties in connection of Bill 22. She came up with a good report but in the midst of the very partisan political atmosphere which then prevailed, it was lost sight of before any clearcut action could be taken in line with her conclusions which were not too strong in terms of action, by the way, at least to my recollection.

I think if the Ombudsman is going to have a dynamic relationship with the media and, through the media, with public opinion, he has to find other occasions to manifest himself publicly in the course of a year, in addition to his annual report. I would suggest that he should find a few opportunities

to make his presence felt in the community in a strong manner. For example, I think all Ombudsmen make a certain number of public speeches before so-called influential groups during a year and through the tone of the speeches, the content of the speeches may vary considerably but these are opportunities where the Ombudsman should make himself known as a person who stands for the little man, for the improvement of the apparatus of public administration, for justice. Mr. Marceau used to make speeches two, three, four times a year, I don't remember. But his speeches were a little much on the descriptive side. He would describe his job, the different phases, etc. He would not take sides. He would not appear as a man who was resolved to do away with abuses by civil servants or politicians and so on - not according to the perception I had of him, and he was a remarkable person as the first holder of the office. I think if we had had a brash type of individual he would have run into difficulties with politicians and perhaps the results would have been different in the province. But in principle, I think this is important.

I think we should see the Ombudsman on the scene of a trouble situation a little - from time to time it would be good if he appeared on the spot of a difficult situation in person. The press is always impressed with direct manifestations of an office or a government service or any organized force. And if the Ombudsman appeared on the spot when a difficult situation arises, I think it would do a lot of good to the office. I'm thinking of the investigation which Miss Patenaude did last year of the children - the children from immigrant families who were in difficulty in connection with Bill 22. I think it would have been better had she been seen more on the spot talking to children from immigrant families, to parents, to educators, etc. I think it adds a force to this presence which is absolutely indispensable.

I think it's inevitable and desirable that the Ombudsman should become involved in head-on confrontations with officialdom. He should not seek them for the pleasure of them, but this job is inconceivable if it does not force its holder into confrontations with higher civil servants or politicians from time to time. And the tendency of course, and I would understand that, is to try and resolve the problems in a discreet manner thinking of the good of the individuals who may be involved. But if a principle is involved, I think it's important that the Ombudsman's attitude and preoccupation should go beyond the concrete improvement of those individuals' lot and also take into account the principles which are involved and which must be aired in the arena of public debate. We've seen rather little of that in the province until now.

I think if the Ombudsman is to catch the attention of the media, there will have to be more situations in which he appears as the person who cares for the little man, for compliance of officials with the law, with the spirit of the law and regulations as the person who is closest to the little man in the entire province. And when this is felt by the media, when this has been established beyond doubt, I think many of the problems which Ombudsmen may have with the press will be resolved.

Thirdly, according to the perception which they have of him, the Ombudsman is liable to be treated by the press with aloofness, sympathy, indifference or hostility. I think the trait which has been most frequent in the last few years, at least in my province, has been a kind of sympathetic indifference. We all like the Ombudsman but we all have other problems to attend to. We got Miss Patenaude's report, it must have been about two or three weeks ago. When the first report appeared about 6 or 7 years ago, I was one of the first ones to read it in the province. I haven't yet read this one. It may be attributable to my own negligence, you know, and I would confess that very, very simply, but I think the contents of that report may perhaps not have been attractive enough, not strong enough to attract the attention of people who have a lot of other documents to read at the same time.

I think it's the Ombudsman's responsibility to see to it that he is known and appreciated for what he is. This applies both to the person who holds the office and to the office itself in addition to its public statements which should be generously explained to members of the press. The Ombudsman should manage each year to have several private conversations with responsible members of the press who are liable to be interested in this work and to contribute to a dissemination of information concerning his work. In the course of those private conversations, a journalist will learn a lot of things he would not learn otherwise. As you know there are two concepts of journalism in this respect. Some journalists have so much self-respect for their profession that they will not indulge in any private conversation with any public official, and some public officials share the same philosophy. Well, that can work. I think it applies to certain kinds of persons. But my concept is different. I think if the journalist is not apprised of full information, both private and public, regarding a particular situation, he's very badly placed to act effectively upon it. And I think it's the Ombudsman's responsibility to initiate such contacts. Of course there are risks involved. There are risks if I talk to a minister that people might say, well Ryan is interested in running a parallel government. Well that's part of our profession. I like those accusations by the way. They have never kept me from sleeping, I can assure you of that. But you have those two theories clashing with each other all the time. And

should the Ombudsman adhere only to the quieter theory, he will have to pay the price. He'll be ignored by the press. But if they know he has talked to the editor of the Star, to the justice editor of La Presse or to the publisher of Le Devoir or one of his associates, the government themselves will be cautious. They will say, perhaps Ryan is aware of this detail, perhaps Ryan is aware that the Deputy Minister of Justice did not act upon the recommendation of the Ombudsman. And you can make allusions to these things in your articles. There are thousands of ways in which you can do that and force governments and established authority to take this work more seriously. But if the Ombudsman thinks that his annual report will suffice to arouse the attention of public opinion, he's profoundly mistaken, profoundly mistaken. And there is nothing that could more please established authority - as we say in French - les autorités en place - than this kind of soft, quiet attitude.

PANEL CHAIRMAN

KEN CAVANAGH

We can move on to Judy LaMarsh who has just brought out a report, not to hit us all with, I hope. Judy LaMarsh.

PANELIST

THE HONOURABLE JUDY LaMARSH, P.C., Q.C.
Toronto, Ontario

Thank you, Mr. Chairman, (applause)....I propose to take a somewhat different tack on the subject of the Ombudsman and the Media. One of the recommendations of the Royal Commission on Violence in the Communications Industry, arising from our concern about accountability, particularly of the media beyond the balance page, was that there be a national media ombudsman, and alternatively that there be provincial media ombudsmen.

Now Monsieur Ryan has talked about accountability and he's talked about the search for justice for the little individual and almost shoulder to shoulder has placed himself with the Ombudsman in the protection of the individual, the relatively powerless individual against the masked power of enormous government.

Our tack in the Royal Commission and the one to which I propose to address myself this morning is to place myself on the side of the small individual who is facing the massed and

perhaps even more powerful groups of the media. Now as to the dilemma which journalists face which Monsieur Ryan referred to, if we could talk about pure journalism, that is the pure profession without any kind of commercial aspect, I could agree completely. But unfortunately as we all know, 75% of the income of newspapers in Canada and everywhere else in the world comes from their advertising, and newspapers, magazines and other print journalism doesn't start with, "well, we have so much news we'll put out a 50 page newspaper today". In fact what you do is you place all your ads and then you see what's left, which is called the news hole, and that's all the time there is to put any news in.

I don't know which is the chicken and which is the egg when people began to get their news from the electronic media more than from the print media, and I'm sure that that's probably not true of the people in this room because elitist or not, it appears that leaders in government and in business do take their news principally from the print media. But the great mass of the public are increasingly taking theirs from electronic media and particularly from television.

In the beginning I suppose when people put out newspapers to vent their personal views and when the subscriber paid for the newspaper in fact, there was much less reason to have some sort of a council or some sort of accountability, and it was fair enough for media to say, "our accountability to the public is reflected in whether or not they buy our print media. And that's clearly shown if our circulation goes down - then we're doing something wrong and we'll have to adjust it". That doesn't, I think, happen to be the case now. No newspaper is a reflection of a particular person, even some of the Quebec papers. I am told that the editorial pages don't necessarily reflect what's in the news pages.

Because they have become so powerful and because we have increasingly fewer outlets, it's no longer possible to say, "well if you want to go and start your own newspaper, do it, and you can have your say" -notwithstanding the fact that that's been done very successfully in Toronto in the last few years and appears to be about to be done successfully in Ottawa. It really isn't possible for the ordinary person on the street to go and start his or her own newspaper to meet whatever there is in the papers which are available now. Even less is it possible, as the electronic media become increasingly important, to go and start your own television station and get your views forward.

While it's always been a matter of selectivity to take even letters to the editor which is one of the obvious places for an individual who feels aggrieved, either on a public policy point or on something which affects that person, him or herself, we

all know that there are a lot more letters received than can ever be printed. And in some newspapers the editorial staff itself selects the newspaper letters which will be printed because they don't want things that are not reflective enough of their own editorial policy. In other cases there's a distinct attempt to separate even that function of who chooses which of the letters to the editor to print.

Increasingly, newspapers have found that they themselves are aware of their necessity for accountability, and things like the office which Mr. Borden Spears holds in the Toronto Star have come into being. And during the time of the Commission, we had the opportunity to discuss with, what is in effect, a media Ombudsman for a particular organ - their role. One of the difficulties is that, with the greatest respect to Mr. Spears, I think the public at large sees him as being a kind of captive of the Star and that while he might have some very pungent and cogent things to say, the Star is not likely to let him rip into guts without trying to soften what he has to say. It may be and probably is a quite unfair attitude. We talked to Ben Bradlee of the Washington Post and found what efforts that newspaper has made over the years to try and have a media Ombudsman which refers only to its own newspaper.

Now in this province, I guess the best you get in something like the Globe and Mail is "oops we erred", and a little box in which they try to write certain things. That is not a very easy means of access to the actual columns themselves for an aggrieved individual. And we certainly heard in two years of listening to the public a great deal of complaint that there is no accountability in the media, that even in a local newspaper of which there are fewer and fewer, since most belong to chains, can you get any accountability. You can't get accountability from the man who runs the local theatre and the last person you can get accountability from is the one who runs the television station, because he knows and you know that what's showing up on your screen is coming from some much greater distance.

Now one has to wonder whether or not this really is a great source of aggravation, whether people are hurt. We obviously have in each of our jurisdictions libel laws and we have criminal libel laws. They're not much resorted to, partly because they've become extremely formalized, very difficult types of litigation to get into. And while all the newspapers here probably have the experience of once or twice a year being sued on one point or another, it hadn't been as common to sue the electronic media. I think the CBC, within this year, is probably going to catch up with all the newspapers in Canada, at least if you consider the federal members who were allegedly libelled in the "Connections" shows, and Premier Lougheed of late date. It can go a

lot further than that of course. This morning's Globe and Mail carries a story in which the native people of Canada at the CRTC hearing yesterday made a great complaint of the distortion and destruction of their culture which is coming about because of the southern programs which are being beamed into its area. You don't have to study very long until you find that that's not unique to Canada. One of the greatest problems in Italy has been that they - in setting up a national television system - homogenized the culture of Italy and suddenly realized that they were losing a very rich mosaic which had been the culture of parts of Italy prior to that, and they're now in the process of trying to dehomogenize.

Well, news itself is usually the place from which lawsuits come. As I say, not many people have sued television and in fact there's not much you can do. Even if you get a retraction, the fact that you go through a lawsuit or go through a lawyer and get a retraction two months later on a television news program makes it less than worthless. I know out of my own experience of at least one case, and probably two, in Ontario where the CBC's local news reported something and a piece of it was picked up and used on National News though local reporters knew that there was factual error in it which caused very serious damage to a public institution and to its shareholders who are private individuals. And we don't have class actions, as you know, in this country, and a great many people can be damaged by a very little.

Electronic newsmen would have you believe that they follow the same precepts as print journalists. It's arrant nonsense for the most part. Print journalists have considerably more time and a lot more space. What television is all about is television, not about news at all. And that is something most honest people who are in the news pattern will admit.

Well, how does the individual then who feels aggrieved by something in the media get some sort of redress? He can write a letter to the editor. Or he can phone up and bitch at the local station manager or the news manager, if he can find out who it is on television or radio. And that's about it, aside from going to court and pursuing a very cumbersome and long, expansive piece of litigation for damages. But it doesn't really catch up with it. We've all come to a conclusion that the little person, because of government, needs to be protected. But because media is for the most part privately owned, we're a lot less likely in this country to say "how do we force accountability upon this very powerful part, indeed, of our government, who call themselves the fourth estate?"

As I've indicated, some media set up their own ombudsmen. I don't think that Bob Cooper for instance has ever, although I don't watch all the time, turned on electronic journalists, or ever turned on CBC itself, with a complaint. If that's wrong, I'm sure he'll tell us. That's one way.

The other way is, of course, setting up press councils. And that's been very much resisted in this country. Press councils exist in a number of different ways in European countries. Some of them are called Courts of Honour, and have been set up in some countries by a few print journalists, and some electronic, and in others by all of them. I would like to hear Monsieur Ryan with his experience with the Quebec Press Council, because it is, I guess, the oldest. It's somewhat older than the Ontario Council and the Alberta Council and the Council of the City of Windsor. It uniquely in Canada has all of the media in it, print and electronic, and it is concentrated on one aspect at least, which is the aspect of making journalists more professional, because we think that's one aspect of it as well. But we also think that if there are not voluntary press councils that there ought to be statutory press councils. A number of countries have gone that route. In Ontario, of, say, the Toronto daily newspapers, only the Toronto Star is a member of the Ontario Press Council. And it's obviously weakened by the fact that only about a half of the circulation in the province is carried by that council. I suspect that it's getting more public notice and it will be stronger. But other newspapers which take the position that no, that's only a foot in the door, are ones which are not going to strengthen the whole question of accountability.

You will all know, I suppose that when the Senate Committee under Senator Davey reported on the media some years ago that there was a strong recommendation for a national press council to be set up then, and that was really the incentive for the Ontario Council and the Alberta Council as well as the Windsor Council.

In the United States there are a number of individual councils in cities, and within the last few years a voluntary national press council has been set up which deals with electronic and print media. It's still quite weak and it deals with national news issues.

If you don't have that kind of accountability ready to be shown by people on a voluntary basis, then you have to look at the question of a statutory basis. And just as lawyers and doctors are in their profession under a statutory framework, so it was thought that journalists might well be under a statutory framework which would still leave them free for their own councils and to conduct their own accountability sessions.

The purpose of a media ombudsman would be twofold, really. One is to protect the media from incursions by government, and that may or may not be terribly important in the future of Canada. And the other one, of course, is similar to the statutory ombudsman which is to protect the individual from the power of the media. We know that there are considerable problems in trying to set up a national media ombudsman because most of the press is dealt with on a provincial basis. If there were a provincial ombudsman it perhaps would be much more responsive to the public, and indeed at one time we thought of a recommendation asking the provincial government to add that function to Mr. Maloney's function in the province of Ontario. We also considered that perhaps the post to which Mr. Gordon Fairweather has just recently been appointed as an ombudsman, although he's called a commissioner, I think, on the question of civil rights might be a good place to place that kind of responsibility. You have to consider what the media ombudsman should do. Should he be able to award damages? We thought no, we should leave that open still to the courts. Should he be able to penalize the newspapers and the television concerns involved? We thought not, at least in the first instance although that is what the press ombudsman in Sweden - the first of his kind - can do. We thought simply to require publication would be at least the first step and that's what is done now in voluntary press councils. That's what's done in Denmark's press ombudsman who is only for one newspaper and that for a kind of limited commercial newspaper. That's the only experience there's been so far. The press ombudsman in Sweden and this limited one in Denmark.

PANEL CHAIRMAN

KEN CAVANAGH

On that point Judy, are you midthought or could we move on?

JUDY LaMARSH

I'm at the last sentence I think. So that we really don't know how it would operate, but we do know that there is very considerable restiveness amongst the public not just requiring accountability from government but also requiring accountability from the enormously important and powerful media. (applause)

PANEL CHAIRMAN

KEN CAVANAGH

Cameron Smith of the Globe and Mail representing a newspaper that is not a member of the Ontario Press Council. Cameron

PANELIST

CAMERON SMITH

Assistant to the Editor
The Globe & Mail, Toronto

One of the propositions that has been put to us is to answer the question, "Do we need a media ombudsman"? Since that comes directly from the recommendations of Miss LaMarsh's report, let me read you some pertinent sections of that report. And I'm quoting now:

"The commission recommends institution of a national media council representing both the communications industry and the public on a statutory basis headed by a national media ombudsman. The commission recommends that the national media council be set up in line with the procedural recommendations stemming from a national conference of organizations concerned with the quality of Canadian life, especially those that do not feel the mass media are properly filling their real or implied mandate to contribute constructively to the Canadian social environment."

Now I'd like you to look very closely at what's being said. The concern is to make sure that the press contributes constructively to the Canadian social environment. I ask every one of you to dwell upon that phrase, because I think it embodies everything I find iniquitous about this whole proposal. Dwell upon it and then ask yourself how it differs in principle from the core philosophy behind the press laws in Chile, Columbia, or in Lebanon or South Africa, in eastern Europe, in Thailand Malaysia, or the press law that Indira Gandhi tried to impose in India, or in any number of countries where the press is controlled.

No agency in Canada requires us to contribute constructively to the social environment and I would damn any that tried. You see, the entire principle is wrong. It offends so deeply and so fundamentally against the rule of law. What a media ombudsman would offer us is the rule of men, discretionary rule, and what in our eyes is even more offensive, it would offer the rule of men or women or combinations. It would offer the rule of men who report to the state - in the LaMarsh Commission

proposal, men who would report to Parliament.

I say let there be laws limiting the press. There are such laws now - laws of libel, laws of obscenity, laws against divulging official secrets, laws affecting defence, treason, sedition, laws against counselling a crime, laws concerning contempt of court, laws governing what parts of trials can be reported - a whole raft of laws. Now if those laws are not stringent enough, if they don't offer the public enough protection, tighten them. But for god's sake, let it be the law that rules and not some state agent.

If we are accused of wrongdoing, take us before the courts and let a judge determine if we have infringed the law, not the particular sensitivities of some particular person reporting to the state. Judges we will trust, state agents we will not. Judges have a tradition of independence. They fought for their independence from the king and from the state in the great legal battles of the 17th and 18th centuries. We fought for our independence at the same time.

We remember it, I think, each and every one of us. We fought the iniquitous stamp laws in England that were aimed at squelching the press. We fought for the right to report parliament's doing, simply to tell people what was happening in their own parliament at a time when an MP could have a reporter thrown out of the House at whim simply by pointing his finger and saying "I spy a stranger." We don't trust government. It's not our job to trust government. And we would never trust a state agent empowered to rule over what we should or should not print. There should no more be an ombudsman for the media than there should be an ombudsman for the courts themselves. The independence of each is too important to the functioning of a democratic society to be fiddled with by the state.

If you say judges and courts cost too much, then make judges and courts more available. Provide legal aid where necessary but don't ever make the mistake of thinking that where you are dealing with an institution as fundamental as the press, that you can rely on the discretionary rule of men beholden to the state and spurn the rule of law.

I take as holy writ the statement of Mr. Justice Duff of the Supreme Court of Canada in the 1938 Alberta press case. He said and I'm quoting, "The right of public discussion is, of course, subject to legal restrictions, those based upon considerations of decency and public order, and others conceived for the protection of various private and public interests with which, for example, the laws of defamation and sedition are concerned. In a word freedom of discussion means, to quote Lord Wright in *James v. Commonwealth*, 'freedom governed by law'. Even within its legal entities it is liable to abuse and grave

abuse, and such abuse is constantly exemplified before our eyes. But it is axiomatic - said the judge - that the practice of this right of free public discussion, of public affairs notwithstanding its incidental mischiefs, is the breath of life for parliamentary institutions." Now most of you know what the Alberta press case was about. For those who don't, it was an attempt by the Social Credit government in Alberta to pass a law called the Accurate News and Information Law, which gave the government the power to force newspapers to print the text of government statements designed to correct or amplify news stories that the newspapers had published. It also gave the government power to demand all of the newspaper sources in connection with any story.

To return to the LaMarsh Commission Report, no doubt what the Alberta government had in mind was simply to ensure that newspapers contributed constructively to the Canadian social environment. Thank you. (applause)

PANEL CHAIRMAN

KEN CAVANAGH

Thank you, Cameron. Robert Cooper.

PANELIST

ROBERT COOPER
CBC Television Ombudsman
Toronto, Ontario

I'll be talking about the ombudsman in the media rather than ombudsman for the media, and the relationship to the official Ombudsman. And I'd like to do that within the context of our justice system.

Until the last decade or two, we had a quite simple theory of the justice system. The system of justice had a mechanism. The mechanism was the court. The courts were there to try to give out justice. It had a product - the justice system had a product - legal rights and legal remedies. The justice system had people to do it. The personnel were known as lawyers. Over the last decade or two, we have seen that this kind of system has been too rigid, has developed a kind of system of hardening of the arteries, has in fact, been out of reach for people. The cost in terms of money, in terms of time, in terms of inconvenience, in terms of hardship meant that other alternatives had to be developed. Whether the legislators created them or others created them.

Within that context, the alternatives of ombudsmen in the media or official ombudsmen, I think, can be better understood. The similarities can be seen. Media ombudsmen and official ombudsmen are attempts to divert problems of justice out of the courts and lawyers and the normal legal rights and remedies into other forms. It's a voluntary type of diversion in one case to official sponsored government forums known as official ombudsmen, in the other case to private, unofficial forums.

Again, this has developed because of costs and also because of an increased concern about the humanistic values of equity and of access. What I'm trying to do is show that the official and the media Ombudsmen are not worlds apart.

Taking a look at these media ombudsmen to understand what they do, I think it's important to know who are their customers. The first thing to notice is the numbers. About a year and a half ago, I remember speaking to the Toronto Star and found out they receive - Rod Goodman, his Action Line received - about 100,000 letters a year. At the very least, and this was two years ago, 5,000 Canadians every week turned to the Action Line. Again, more and more evidence of the fact that people were looking to make the justice system work when it would not through the court system. They of course did not just go to the media ombudsman. They went to their own ombudsman, the official ombudsman and when official ombudsmen weren't there, they went to other kinds of ombudsmen known as Members of Parliament.

Professor Friedland in his book Access to Law points out how many people with disputes have moved away from lawyers to other alternatives. Police receive between 3 and 6 million calls for legal assistance a year. The British Columbia rentals-man receives about 150,000 requests for information. People, then, with problems are turning away from lawyers or turning away from courts and turning to these alternatives, one of them being the media ombudsman.

What kinds of problems do they have? In a word, the problems have to do with communication.

The Law Reform Commission did an analysis of the kinds of problems we receive. 62% of all our problems had to do with problems of communication. People did not understand what their rights were or how to enforce the rights that they did have. There was a study of the London Free Press Action Line called Sound Off. Again it pointed out the sense of powerlessness that people had. 63.5% of those who wrote to that action line said that if their interests conflicted with the interest of someone they perceived as stronger, they would not receive any justice.

A Quebec report called "In the Hands of the Law", pointed out that 80% felt that there was no justice at all. The single common thread that I see in the kinds of problems we receive is exactly that, the sense of powerlessness, the sense of frustration, the inability actually to master what's going on around them.

It always comes back then to the sense of communication or the lack of communication. If that is the problem, if communication is the problem and I might add that I've not only seen this in the role I have now but also as a storefront legal aid lawyer in Point St. Charles when again it was clear that people's problems were fundamentally problems of communication.

When you go to an ombudsman, official or otherwise, when you go to a court, when you go to a lawyer, there are so many stages of communication you're going through. You have to first realize that your situation is a problem, that your problem is a grievance, that your grievance has a remedy. And each link requires some understanding, some information. And especially in my role as a storefront legal aid lawyer, it became clear that what we presumed, what the legislators may have presumed, just did not work. People never made those communication links.

If, then, it is a problem of communication, what better alternative is there than the communication media - the media which is the communication needed to handle those kinds of problems. People do not trust the law, they do not trust the courts, they do not trust in many cases, the government. Right or wrong, they trust television.

There was a study that showed that the average hours of viewing, I believe, was two hours but for low income 5.2 hours a day. Like it or not, then, I think that there's a tremendous potential for use of the media to try to resolve disputes.

Finally, we began the whole discussion with Ken speaking of the use of the word- if there are so many ombudsmen why do they always have to use that word ombudsman. It's confusing people. And I admit to the fact that there is that confusion. I think Harry Smith, the Nova Scotia Ombudsman has put it best, when he mentioned that one day someone came to him and said, if I don't get service from you, I'm going to your boss Cooper in Toronto. Yes there is that kind of confusion, but I would argue at the very least, people can now say the word. What a cumbersome word ombudsman is. A person who has had so many problems with government, would they ever turn to another anonymous form of government with that kind of word? I would hope that the action lines and the CBC have at least popularized the concept and made it more accessible, and that's what I believe the ombudsman began - the rationale for the ombudsman was to make it accessible.

Finally then I would say that in a system that seems to be so draped with secrecy, surrounded by bureaucracy, riddled with special interests, ombudsmen, official - the real ones - and the phonies like me, have a role. Thank you. (applause)

PANEL CHAIRMAN

KEN CAVANAGH

There are a lot of key words being used, by myself and others, Bob, but I haven't heard "phony" really. Fair being fair, Borden Spears now from the Toronto Star; and the Toronto Star is a member of the Ontario Club er-(laughter) well it is that too, sorry the Ontario Press Council.

PANELIST

BORDEN SPEARS

Senior Editor and Editorial Ombudsman
The Toronto Star, Toronto

Mr. Chairman, we've heard some provocative ideas expressed this morning and some of them have provoked me. I think it might be best to leave those ideas for further discussion in the period that's to follow this and that I might develop one or two thoughts of my own. I've also been thinking of where the ombudsman idea emerged. It seems to me that it has come about as part of a movement or at least a yearning in western democratic society, a yearning for anarchy. And I'm speaking of anarchy of course in its best sense - as a system in which people, individuals and institutions behave so well that you don't need any government at all. We haven't yet reached that ideal stage in human development. We still have governments, but as anyone of my advanced age will be aware, governments aren't what they once were.

In my youth we all lived under authority and we accepted an external discipline as part of the divine order of things. Our governors were our betters, and they knew what was good for us. It was sacrilege to challenge them. If you got a strapping from your school master you automatically got another one at home. Well, that day is passing.

We're into an age of dissent, of protest, of a new kind of revolution. We've lost our unquestioning faith in the state and the church and the school and all the traditional institutions that once regulated our lives. We take it for granted that power corrupts.

Politicians are held in low esteem and there are many who now believe, as Judy LaMarsh believes, I think, that the press wields more power than parliament. They're mistaken. The press has virtually no power at all in the sense that power is the ability to make and enforce decisions. But parliament and the press share this problem of a loss of trust, and they've come to recognize that they have to do something about it. What some of them have done is what the department stores did long ago, they set up a complaints bureau. That analogy of course isn't exact, but every ombudsman does serve as a functionary who deals with complaints. And I've made the comparison because one of the questions that the members of this panel were asked to consider is whether the legislative ombudsman and the media ombudsman complement each other or whether they're competing for clients. That suggestion strikes me as rather strange. The distinguished gentlemen here who are endowed with legislative authority can speak for themselves. But as a newspaperman ombudsman, I'm not competing for clients with anyone. I suspect that both our employers would be happy if there were no complaint at all, and they could dispense with our services entirely.

The objective of the ombudsman is to be visibly in place, ready and able to act for any person who has a problem with bureaucracy. I doubt that any ombudsman is interested in drumming up clients in order to keep himself in business.

Now we've talked about the word ombudsman and what it means and I think at this point we have to make a distinction between the newspaper ombudsman who functions inside the newroom as a representative of the readers, and the wider role of the newspaper itself as an ombudsman for society. The first role is the one I occupy and the second is the role Robert Cooper plays, and it's the role the press generally likes to claim for itself.

The press does regard itself as the loyal opposition, the representative of all the little guys, as Claude Ryan has said, who find themselves being pushed around by the big guys, whether it's big government or big business or big labour or whatever. A free press in a free country fiercely resists the notion that it should be used as the spokesman or the agent of any power centre including government. It's not an instrument of government. It represents the governed. And this doesn't mean that it's against the government.

The managing editor of the Globe and Mail I think was quite wrong when he described his newspaper as the official opposition of the Davis administration in Ontario. The job of the press is not opposition but disclosure. It's a watchdog. Its job is to keep a vigilant eye on what governments are doing, both good and bad, and certainly to cast light on any abuses of power. That's why the press and government are constantly

at odds about how much information should be disclosed. Governments naturally are interested in the spread of information that will help them to function efficiently and smoothly. They don't like awkward questions. The press believes that public affairs are the public's business and it will ask as many awkward questions as it can think of.

So in this respect, the legislative ombudsman and the press as ombudsman are plowing the same ground, and I suppose it could be said that they're competing for clients. The official ombudsman has one important advantage over the press. He has a constituted authority and when he asks a question it must be answered. There's no law that required anyone to tell the press anything. But the press also has an advantage over the official ombudsman. It doesn't have to worry about jurisdiction.

The latest report of the Ontario Ombudsman has some interesting figures on this point. In the period it covers, about eight months, he received some 5,000 complaints from citizens. But only 1,800 or 36% of these fell within his jurisdiction. In most of the others, he was able to give some form of advice or assistance but he hadn't the authority himself to deal with them effectively, and I gather that Mr. Maloney feels this constriction quite keenly. The press doesn't suffer from that disability. It can deal with any and all suspicions of misdoing in every area of human conduct, and it can publish the results. This is because no legislature has appointed the press to be an ombudsman and nobody has drawn up the terms of reference. It's a self-appointed busybody and with a few exceptions it makes its own rules. And that brings up another question that the members of this panel were asked to consider and which has been dealt with already to some extent.

Can the press be trusted to police itself or should there be an ombudsman for the media? It's an attractive idea that the unruly press should be compelled to behave itself. It's attractive even to such thoughtful people as Judy LaMarsh. I think it's a highly dangerous one, and it's worth examining because it's developing in this country. The federal government and the government of Ontario are both working towards so-called freedom of information laws at this time. In both cases, they're considering not only more access to information but more restrictions on information, especially in the area of privacy. Miss LaMarsh in her report on violence in the media has advocated a law that would, in her words, "define the limits of free expression". That's an obvious contradiction. If you limit expression it's no longer free. And she would establish the media council that she's described and its job would be to write and enforce a code of ethics, and she would appoint a media ombudsman who would have direct power to order certain things to be printed or broadcast.

Well, before we accept all that, I think we should look at how we got to where we are today. We started early on with an authoritarian view of how the press should be managed. The first newspapers in Britain were published under license and the license could be cancelled if the government didn't like them. That was a negative kind of control. It's been succeeded, particularly in the totalitarian countries, by a more positive kind of system. The first thing such a regime does is to seize control of the mass media and use them to further the purposes of the state. But Britain and the United States from the time of Milton to Thomas Jefferson went in the other direction, towards a completely libertarian press that acts as a check on the machinery of government. And John Stuart Mill summed up the reason in his essay on liberty. He wrote: "If all mankind except one were of one opinion and only one person were of the contrary opinion, mankind would be no more justified in silencing that one opinion than he, if he had the power, would be justified in silencing mankind". In other words we depend on a self-correcting process, a free marketplace of ideas where people can exercise reason and choice, where all ideas have an equal chance. That's the theory, and it was a good one for its time. The trouble with it now is that we've reached a stage in which there are larger and larger media corporations concentrated in fewer and fewer hands, and fewer and fewer media voices. The marketplace of ideas shrinks and it needs something more to be effective.

What has been added in recent times is an acceptance of the idea that freedom brings obligations and the free press has a social responsibility. The press in Canada has accepted that responsibility which brings us back again to the question of whether it can be trusted to police itself or whether we need that media ombudsman as an enforcer.

Well, in my view, the remedy of official intervention would be worse than the disease. The press is guilty of many errors and many sins. Many people sincerely believe that it's out of hand and should be dealt with in the obvious direct way, by using the police power, the regulatory power, the legislative power, the judicial power of government. I think we have to resist that beguiling idea. We must decide what we believe in. If we no longer believe in a democratic political philosophy, if we believe that big brother knows best, then we should call on government to correct the ills that do beset the mass communications.

If we believe in the freedom to know and to tell, to argue, to dissent, then we should insist that government keeps its hands off, and it's not easy. But I think we don't always realize that in this country the press has no special privileges now. It enjoys no liberty that is not the right of every citizen. I don't believe it should enjoy any less.

Well the topic of this discussion is the ombudsman and the media. I've suggested that to some extent these two institutions are in the same line of work. Both are investigating abuses of power or at least the misuse of power although their methods are different and their sphere of action is different. It's not a job that guarantees popularity. If you want to be universally loved, you should be neither a journalist nor an ombudsman. I know that because I happen to be both, and I believe the Ontario Ombudsman has made a similar discovery.

I believe with Claude Ryan that the press is a part of the society but it also stands apart. It has few friends and no allies and that's the way it should be. I believe the public ombudsman is in somewhat the same position. But because they are in the same line of work, I think the press should be supportive of the public ombudsman. In particular it should be zealous to explain his function and to make his work known. It has recently appeared that there are some unsuspected limits on the ability of the Ontario Ombudsman to report publicly on the work of his office. I hope the press in Ontario will vigorously support whatever efforts he makes to open his records more fully.

Mr. Chairman, I think we've exhausted our time and I'm certain we've exhausted the audience. Thank you. (applause)

PANEL CHAIRMAN

KEN CAVANAGH

I hope neither of those exhaustions apply, Borden. We're going to get to questions from the floor, from now on but could I just mention two things that came to me as I was listening to the panelists this morning.

And I remember John Diefenbaker - I don't mean to drop names - telling me something, (telling me twice, Judy, before you accuse me of partisanship), telling me at the height of the euphoria of the largest electoral victory in Canada, and just a couple of days after one of the most crushing defeats, I guess, at the polls in Canada, he told me the same thing twice which stuck in my mind. I not only was younger and impressionable but it was there and it wasn't a new thought to him or by him and he didn't pretend it was. He said that people get the government they want and the government they deserve. And following from that, it's always struck me that the people in a free, democratic society such as we have, get the press that we want and we deserve. I don't know if that brings me down then on the side - I guess it does to a great degree - against the proposal that you put forth in the Commission Report, that there should be a media Ombudsman. It seems to me that if the people get the

government they want and they deserve, I think in our society it has to follow that they get the press that they want and they deserve.

Claude Ryan mentioned an interesting word earlier too - fear. I'm not sure if you're aware, Monsieur Ryan, but Professor Friedmann from Calgary, who is in the audience has just done a survey of Ombudsman offices in various provinces, and I was rather interested because I just hadn't thought of it being a question - but there was a question on a form he circulated to civil servants with regard to how much they feared the Ombudsman. It struck me when I saw that question itself that the word fear just hadn't been one that I'd had in my Ombudsman's vocabulary. I don't mean to say that fear and responsibility are mutually exclusive, but are they at the same time interchangeable? I don't know, and that is a question I've just put to the audience. Do we have anybody from the floor or anybody on the panel who would have further questions? Ambrose Peddle from Newfoundland.

AMBROSE PEDDLE

Mr. Chairman I don't disagree violently with anything that was said. I don't think I necessarily agree with Mr. Cooper that he's a phony. That's not that important, but I don't agree. I think he has a function. I was particularly interested in the comments of Mr. Ryan and I suppose it goes without saying, but at the same time probably should be said, that while there are outspoken, flamboyant and ostentatious and quiet and I suppose responsible and irresponsible Ombudsmen, it must be said that the same thing would apply to the press in just as great a degree.

About the Ombudsman being feared, I suppose there's a distinction there. It's the Office itself, the power of the Office that should be feared more than the individual.

I was interested in the assignment that was given to Madame Patenaude in Quebec relating to some sort of a study on some of the consequences of Bill 22. My personal opinion on that is that I would go so far as to say an injustice was done to the Office of the Ombudsman to give it such an assignment, because that was a highly volatile, political situation and I can only say that in my province if my legislature tried to give me such an assignment, I couldn't refuse it. But I'd certainly try to impress upon them that they weren't doing any favour to the institution which they had established in forcing it to become embroiled in that sort of a situation. The Bill was not an accomplished fact at that time, as I understand it. It was proposed legislation and we have a system - with all its weaknesses - we have a system for debating proposed legislation and I don't think an Ombudsman should get involved in that at all.

PANELIST

CLAUDE RYAN

Just as a point of fact, if you allow me. This was legislation which had been regularly adopted.

AMBROSE PEDDLE

I see, fine. Anyway, the point I would like to make is that the way I see the role of the Ombudsman doesn't coincide with what appears to be Mr. Ryan's concept. I see our role as basically responding to specific complaints from the public, and following up those complaints and going to the limit that we can go, and the final limit is public exposure - and at that point making any comment that we could make on desirability of changing policy. But I don't see our role as being one of daily contact with the press. Mr. Ryan said that those of us who adopt the quieter theory would have to pay the price. I would suggest that those of us who would adopt an overly aggressive approach would have to pay a much greater price.

I was interested in Mr. Smith's comment on the respect that he has for the judiciary. Now I don't put ourselves in exactly the same category as judges, but I think everybody would agree that we do have a quasi-judicial function. And I think if we allow ourselves too much of the kind of aggressiveness that Mr. Ryan appears to suggest, we would never gain the type of respect or anything approaching the respect enjoyed by the judiciary, because I think it's because of this very reason that they have reached that position of respect: they quietly do their work. They deal with the things that come before them and they are not every other day becoming embroiled in the strident voices that seem to take on everything that comes up today. We have lots of people including the government, the opposition and all of the other countless agencies to debate matters. I don't think that's our role and I say so with respect. Thank you Mr. Chairman.

PANEL CHAIRMAN

KEN CAVANAGH

Bob Cooper, yes.

PANELIST

ROBERT COOPER

The only comment I would want to make is that I believe that one of the main reasons, as I said, that Ombudsman, that the institution has developed is because of the problem of access, because the courts may be respected but they do not function effectively in terms of helping so many people's problems. I think that access - one way for the Ombudsman to be accessible is to use the media around him very effectively. And I would agree with Mr. Ryan that to play a quiet role is to react, is to be passive, and is to lose an important part of the constituency. The proper role is to initiate the problems that are there, to initiate and to reach out and to get the people to come to you.

AMBROSE PEDDLE

Mr. Chairman, I don't want to monopolize, but just one second. Something occurred to me, and I don't think everybody appreciates this. I see my role as one being completely in the middle and more often than not having to vindicate the action taken by my government, more often than not and I say that - that's a legitimate result. If I'm put in the position of taking a public position on every volatile issue that might come up, would I not in fairness every other day be on taking a position in favour of the government? I don't think that's healthy, and I still don't think it's basically our role.

But I do agree that, we should not hide under the mat or something. I'm just saying that it has to be something that's looked at very carefully. I've been in the other areas too where I did make use of the press on an almost daily basis.

PANEL CHAIRMAN

KEN CAVANAGH

Could I just point out that I think maybe in that area before we do get a question that possibly the whole thrust of this conference has been to tie the various panels of subjects together, and surely we have just touched on the question that was discussed in the first day's conference - the man and the function - which is certainly relevant to any question like this. Cameron Smith.

PANELIST

CAMERON SMITH

May I make one response to Mr. Peddle? You know, one of the joys of being in the newspaper business is that you can give your paranoia absolutely free rein. I wouldn't ever want to get into the position of, in effect, cooperating with an Ombudsman. I think the idea of working hand in glove with any agency in society is something that we can't do, although we would be receptive to whatever an Ombudsman was doing as a news generating source.

PANEL CHAIRMAN

KEN CAVANAGH

Miss Hansen.

INGER HANSEN

Thank you Mr. Chairman. I listened to the panel with great interest, but I feel also a great need to restate the principle that I think we're losing sight of, and that I think the public may not quite yet have grasped. And that is that an Ombudsman should aggressively represent an individual who feels he has been the victim of maladministration. An Ombudsman is not a substitute for the courts, he does not decide rights. And an Ombudsman is not a direct policy maker although indirectly and as his secondary function, he does influence policy, of course. But I'm afraid that there is getting to be a muddling of ideas, and particularly in respect to what Mr. Cameron Smith said. He said that the legal rights of the citizens in relation to the press should be enforced through the courts. Of course they should but there is another aspect where the citizen hasn't got a legal right. The same thing happens on Mr. Cooper's program. Mr. Cooper quite rightly takes up legal problems where there are enforceable legal rights that are not enforced because a person doesn't know where to go. But the Ombudsman has no power to enforce legal rights, and we shouldn't lose sight of that.

PANEL CHAIRMAN

KEN CAVANAGH

You've just touched another key word too. When you talk of an Ombudsman with power, are you not really just in that one sentence questioning the whole philosophy of the Ombudsman who

has no "power", but has the authority of recommendation or moral suasion only?

INGER HANSEN

If I may answer your question, Mr. Chairman, the Ombudsman has enormous power in terms of investigation and absolutely no power except to show and tell. And that is as it should be, because otherwise you muddle the institutions in society.

PANEL CHAIRMAN

KEN CAVANAGH

That's the point I was getting at though. Judy LaMarsh.

PANELIST

JUDY LaMARSH

I'd like to make a comment on something that struck me as very significant when Cam Smith was saying that he trusts the courts and he doesn't trust an agency of government that reports to the government. It seems to me he doesn't trust the Ombudsman, then, because I think it's true in each of the jurisdictions that they represent that they have this advisory function and they report to the legislature. So that means you don't trust them although editorially the Globe and Mail has certainly espoused the need for an Ombudsman.

PANELIST

CAMERON SMITH

Yes, yes, I think there's a difference. The editorials you were speaking about are mainly dealt with Mr. Maloney. I think there's a difference between an editorial position in which you say, "yes there's a need for an Ombudsman to keep an eye on the functionings of government" and saying, "I trust that Ombudsman". I don't think we can afford, as a newspaper, to trust an Ombudsman, no, unless you have an ombudsman for the ombudsman for the ombudsman, etc.

PANELIST

JUDY LaMARSH

Yes, well the Ombudsman of course, everybody here knows, has come from the Scandanavian experience where they've had a long experience with it, and it originated in Scandanavia as a watch-dog on government. It's a kind of addition to private members of parliament and represents the individuals, and obviously fills a hole where members of parliament couldn't do that. Well it's gone in Scandanavia and my suggestion is that it's going to accelerate and will ultimately come here, and we'll have a media ombudsman because in fact what the media is looking at is large power blocs. There may be some time a media ombudsman for big business or even big labour, I don't know. The real difficulty of course in our country is that there is such a limited field for responsibility. Arthur Maloney has talked about this a lot, when he felt he should be able to do something because there isn't anybody else who could do it. But the statute has defined that he can only look at the provincial government. Nobody in effect can look at the federal government except Miss Hansen on quite a limited basis. And now Gordon Fairweather is going to be able to look at it on another limited kind of basis. And it strikes me that this is really a reflection of this demand that Borden Spears spoke about, that the people demand accountability to them, they demand the right to have some say in what's happening and which is affecting their particular environment. And that there is going to be an increasing desire for this. It's reflected in the fact that press councils which started on a voluntary basis in European countries are now coming to a statutory basis - there's been a Royal Commission on the press, I think the third in ten years in the United Kingdom which has just reported. There's a lot of talk about making that statutorily based.

PANELIST

CAMERON SMITH

In opposition to any sort of legislative control.

PANELIST

JUDY LaMARSH

But there's been a lot of talk about that, and of course that hasn't been followed. Even though the recommendation of the mass media report of Davies was for a voluntary one, tentative steps were taken and historically we've seen that wherever this pressure exists, ultimately there is a voluntary council

and ultimately that becomes a statutory council. I think, Mr. Smith, you're trying to put your finger in a dyke that you're just not going to be able to hold.

PANELIST

CAMERON SMITH

I'm not saying the converse of not trusting the ombudsman is to say that people should trust us, quite the contrary. I think people don't trust the press. We have evidence of it all the time. What I'm getting at is how do you - what mechanisms do you set up to ensure that the press is responsible and is accountable?

PANELIST

JUDY LaMARSH

The Ombudsmen here are a new mechanism and obviously it's very popular because we have all but one province with one. It's something new that's been tried and it's the only way in which you can really reflect back responsibility to the people.

PANELIST

CAMERON SMITH

I think you're wrong in that and I think when you say it's new you're wrong in that as well. History -

PANELIST

JUDY LaMARSH

It's new in Canada.

PANELIST

CAMERON SMITH

The history of government since the Second World War has

been the history of the growth, the immense prolific growth in administrative procedures, administrative bodies. Society has been fracturing at such a rate, it's becoming so complex that we have found it convenient and in some cases certainly advisable to set up boards, tribunals, commissions, all of whom have discretionary power to try, in a positive way, to make people do things that they think are right. And we've moved away from the position in which the state's involvement with saying there shall be freedom of action in a very large area except for the things that we prohibit as infringing upon people. Now I see the ombudsman as very much within the tradition of positive administrative law. And I think we now find ourselves - I mean speaking of a society as a whole - we now find ourselves in a position where, to pick up what Mr. Cooper was saying, yes indeed, people don't know where they are, who is up, who is down, who's on first, and who's throwing from third. There is just such a plethora of people who are saying I know what's right and what should be done, you do it, outside of a framework of the rule of law. Now I see great and immense dangers in that. What was the great British historian, Arnold Toynbee, saying - that he foresees in the years to come not so far away that because of the lack of homogeneity in society we're going to turn to very totalitarian states as being the only way in which to maintain and impose order. The most convenient way to do it of course is through administrative bodies which are not strictly bound by the rule of law.

PANELIST

JUDY LaMARSH

But do you think that each of these Ombudsmen then represents a totalitarian regime?

PANELIST

CAMERON SMITH

No, no.

PANELIST

JUDY LaMARSH

Or is himself a totalitarian?

PANELIST

CAMERON SMITH

I'm saying that there are in the democratic society we've got some institutions which are essential to the operation of it, I think, and which have been enshrined through several centuries with independence. Now one of those is the courts. I think another one is the press. And I think it's important that they not in any way, shape or form, come under the control of administrators.

PANEL CHAIRMAN

KEN CAVANAGH

I have two more comments from the panel here and then I have a number of people to recognize. First of all, Claude Ryan.

PANELIST

CLAUDE RYAN

The thought that the press should come under anything like an ombudsman is so unnatural to me that I even forgot to deal with that aspect of the subject in this morning's session. It did not occur to my mind that we should consider that seriously, to be frank with you. I think there is a great distinction to be made between the acts of the public administration or government and the acts of the press as a different, very different institution. The basic problem here, regardless of what one may think, is the quality of professional standards in each newspaper. Judy alluded a few moments ago to the press council we have in the province of Quebec. I must confess that we do not at Le Devoir belong to the press council, not because we're snubbing them but because we have a problem. We've been trying to implement as high intellectual and professional standards as possible in our paper for many many years and we've paid dearly for that. Should we be called upon to contribute additional sums of money to help improve the standards of other media who have been making considerable profits by adhering to much lower standards for instance? We felt it was not our primary responsibility to do that, and I think my most important contribution to the profession as a whole must be to advocate with my colleagues higher and higher standards in the hiring of journalists, in the handling of news and editorial stuff day after day. I think that's where the problem lies. And

the potential interventions of any institution like a press council or an ombudsman are extremely limited when it comes to the nuts and bolts of our trade. Maybe, I think, the press council is performing a useful role on the whole. It helps progressively but very slowly to define ethical standards which might apply to the different sectors of our profession. But try to apply those conclusions of the press council in any of the cases which they have studied to all the different kinds of media that we have in the province and it will rapidly prove impossible. You will have a large paper like the Toronto Star which has several people to handle the difficult problem. You go to the local paper in Brantford, it has only one person who has to deal with advertising, news coverage, management of the paper, etc. I think the laws of the land are still the best recourse that is available to people who feel they've been victimized at the hands of the press. Those laws ought to be modernized in certain cases. Our press laws in Quebec have not been modified since the late '20s. They're 50 years old, modernization ought to occur there. But I would not place too much faith in those extra bodies.

I'm just reading the report of the Royal Commission on the press in the United Kingdom. They propose that they should maintain the press council. There's no particular enthusiasm about that. It's because they have nothing better to suggest. And there will always remain this aura of uncertainty, improbability, around the press, and I think that's good because it's co-extensive with liberty itself.

PANEL CHAIRMAN

KEN CAVANAGH

We have Mr. Maltby, Dr. Frank, and then Luce Patenaude. Mr. Maltby.

GEORGE MALTBY

Thank you Mr. Chairman. Maltby, Manitoba. Touching upon the comments that you the Chairman raised in your opening remarks about the growing popularity of the use of the title Ombudsman, the official legislative Ombudsman and other unofficial Ombudsmen, I think we have to concede that the legislative Ombudsman has no copyright on that title. And members of the panel may be interested to know what took place in one of the Australian states which was reported to us by this Australian state's Ombudsman at the Edmonton conference last year. When the Ombudsman Bill was going through the procedure of the House, at that time there was an unofficial ombudsman. I don't know whether he was a newspaper Ombudsman or radio

or TV Ombudsman, but they were concerned about this possible confusion. And so a section of that particular act made it unlawful for any person other than the appointed legislative Ombudsman to use the title Ombudsman. The only effect this had was the unoffical Ombudsman carried on and used the title Unofficial Ombudsman and apparently it's had no effect whatsoever on his function. I thought the panel may be interested in that.

On one of the points that Mr. Claude Ryan made about the Ombudsman being more aggressive and being more public and appearing on open-line radio programs and so on, we do try to reach out and to get as much publicity as possible. One of the problems I have faced in appearing on open-line programs is this, that all of our acts state that all investigation shall be conducted in private. I think this is out of recognition for the right of the complainant to have anonymity. And so I have found in my experience when appearing as a guest on an open-line program, a person calls in with a complaint and all I can do is listen to that complaint over the air. I can't stop the caller from saying what he or she wishes to say, but really all I can say to that person is, "well if you care to phone my office or write to me I will determine whether or not your complaint is within my jurisdiction and if it is, I will act upon it." But I found the programs rather dull because of the fact that I cannot engage in dialogue in public.

PANEL CHAIRMAN

KEN CAVANAGH

One of the things that I think we've found in Ontario is that an appearance on an open-line program or something of that nature is really an educational process. But 98.97% of the questions you would get on a radio program, I think, are outside jurisdiction but the very fact, to get back to what Bob was saying, that they're saying Ombudsman, and sometimes even spelling it correctly, is maybe accomplishing that part of the job. Monsieur Ryan was talking about the work - the result, the function of being visible as an active participating and defending officer. I won't even allow you to comment on that other than to nod because we have a question here.

PANELIST

CLAUDE RYAN

No, I don't want the Ombudsman to conduct his court in

public. That was far from my mind, if I was understood to have suggested that, I expressed myself poorly. My point is that the Ombudsman must be seen from time to time doing justice to his fellow citizens. He must be seen performing the objectives for which his post was instituted by law. He was appointed to that post and it's up to him to find the ways in which he will be seen doing exactly that. If he acts in a discreet way all the time, perhaps it's the way he should perform his job, but he can expect rather little from the press in terms of active involvement in the performance of his job. The press will report on his annual report. It will say he submitted his report to parliament yesterday. He dealt with 586 complaints last year of which about two-thirds were outside of his jurisdiction etc., and if there is not more concrete material presented to the press, I say the press can do little with it. It will report faithfully the few lines. We'll have more space on that in my paper than in most other papers, but we're considered intellectual, rather abstract. But that's the problem you have to resolve, and that's why I insist the Ombudsman must meet with considerable difficulties in dealing with departments of government on a day to day basis. It must not always be easy to extract from officials complete details about the way they perform this or that case. Perhaps material of this sort could be synthesized at the end of the year or periodically and this would speak to the press. It would have much more significance than the mere report that he acted on so many cases. That's my point.

GEORGE MALTBY

Just one short response, Mr. Chairman. I agree that the press want news whilst it is still news, and I agree that when the annual report is published it is history.

PANELIST

JUDY LaMARSH

Not Mr. Maloney's. They use up a forest every year. That makes news itself.

GEORGE MALTBY

But we all do have authority in our Acts that notwithstanding the annual report, the Ombudsman may publish reports, with regard to a case in which he has investigated, if in his opinion it is in the public interest to do and I think we all do from time to time other than through our annual report go

to the news media and report a particular case that in the judgment of the Ombudsman is in the public interest.

PANEL CHAIRMAN

KEN CAVANAGH

That question of "may publish" is being considered in Ontario right now so I don't want to get into a technical discussion comparing one Act to another, but yours might be slightly different in that aspect, Mr. Maltby.

Madame Patenaude will be next.

LUCE PATENAUDE

Ma question s'adresse à Monsieur Ryan naturellement - pour une fois que je peux répondre à un journaliste directement. Vous avez exposé votre conception du rôle du protecteur du citoyen; j'aimerais exposer ma conception du rôle du journaliste.

J'ai eu l'impression que vous pensiez que le protecteur du citoyen avait un petit côté journaliste dans son rôle et qu'il aurait la chance d'avoir accès à l'information. Je ne vois pas ça du tout. Je trouve que la conception du rôle du protecteur du citoyen, tel que mon prédécesseur l'avait comprise et moi aussi, donne des résultats sur le plan pratique qui sont très éloquents et finalement c'est le résultat qui compte. Et ma conception du journaliste, j'ai peut-être tort et j'espère que vous allez me répondre là-dessus, c'est de jouer un petit peu le rôle de l'opposition face au gouvernement et aussi de jouer un rôle d'information. C'est cette partie du rôle du journaliste qui, à mon point de vue, doit s'appliquer au rôle du protecteur du citoyen. La conception que je me fais du journaliste, je suis très très heureuse de l'avoir entendu ici par Monsieur Spears - Je suis absolument d'accord avec l'exposé de Monsieur Spears.

Si le protecteur du citoyen s'aperçoit que ses recommandations ne sont pas suivies, il peut faire des rapports spéciaux à l'Assemblée nationale et c'est vraiment l'Assemblée nationale qui va, à ce moment-là, prendre position et les journalistes vont entrer dans le jeu. J'en suis très certaine.

Maintenant, vous avez parlé de la Loi 22. Je pense qu'il serait peut-être intéressant pour la salle et peut-être pour vous-même de savoir quel a été le rôle de la presse face à mon intervention dans la Loi 22 et je vais parler d'un journal que vous connaissez bien, je vais parler du Devoir.

Première réaction de l'éditorialiste du journal Le Devoir: "Le gouvernement refile au protecteur du citoyen une question qui ne le regarde en rien". Alors que ça me regardait drôlement, parce que beaucoup de fonctionnaires étaient impliqués. En cours d'enquête, les journalistes appelaient régulièrement pour dire - "Allez-vous sortir votre rapport avant les élections?". C'est tout ce qui les intéressait. Conclusion de mon rapport, le même editorialiste du Devoir a, dans son éditorial, dit - "elle pousse la logique jusqu'à demander la recommandation de la loi". C'est une phrase que j'ai en tête, je ne l'oublierai pas si tôt. Alors que la Loi du protecteur du citoyen lui impose le devoir, lorsqu'il constate en cours d'enquête qu'une modification législative devrait être apportée, il doit le dire dans sa recommandation. Et enfin, un quatrième et dernier point. Dans mon rapport annuel, j'ignore si vous l'avez lu, la première partie a été envoyée à votre journal, je commente absolument mon enquête sur la Loi 22, de A à Z avec l'appui des documents qui n'ont pas été publiés. Je n'ai eu aucune réaction de la part de Devoir. Ce n'était plus d'actualité.

Oùï, mais vous voyez, en fait que ce qui intéresse le journaliste c'est quand l'enquête a un "punch". C'est tout.

(My question, naturally, is addressed to Mr. Ryan. For once I can respond to a journalist directly! You have given your views on the role of the Ombudsman; I would like to give mine on the role of the journalist.

(I got the impression that you think that the Ombudsman is somewhat of a journalist with easy access to information. I don't see it that way at all. I find that the conception of the role of the Ombudsman, as my predecessor and I both understand it, gives, on a practical level, results that speak for themselves. And it is the results that count. My understanding of the role of the journalist, and correct me on this if I am wrong, is that he must play somewhat the role of the opposition to the government, as well as be a source of information. And it is this latter characteristic of the journalist which must apply to the Ombudsman. My thoughts on journalism, I am very happy to say, have been faithfully reflected here by Mr. Spears. I am totally in agreement with Mr. Spears' presentation.

(If the Ombudsman sees that his recommendations are not followed, he can make special reports to the National Assembly. It is only when the National Assembly takes a position that journalists will get into the game. I'm convinced of that. You have mentioned Bill 22. I think it might be interesting for those present here, and perhaps for you too, to learn of the role the press played when I confronted this issue. And I will mention a newspaper you know well - Le Devoir. The first editorial reaction of The Devoir: "The Government Fobs Off on

the Ombudsman a Matter of No Real Concern To It." This certainly did concern me because numerous Government officials were involved. In the course of my investigation, reporters called regularly -- but only to inquire whether or not my report would be issued before the election! That's all they were interested in. Following my report, the same editor wrote in Le Devoir that "she actually goes so far as to endorse the legislation". A phrase that still rings in my ears and I won't soon forget it. But, The Ombudsman Act stipulates that when, in the course of an investigation, the Ombudsman finds that a legislative change should be made, he is obligated to state this in his recommendation. A fourth and final point: in my annual report, I don't know if you've read it or not, but the first part of it was sent to your paper, I thoroughly annotated my inquiry into Bill 22 and attached supporting unpublished documents. I had no reaction whatsoever from Le Devoir -- the matter was no longer newsworthy..

Yes, but you see, journalists are only interested when an investigation has clout, that's all.)

GILLES MORIN
Director of Rural, Agricultural
and Municipal Services
Ombudsman of Ontario

Monsieur Ryan, Gilles Morin de l'Ontario. On m'a demandé d'agir comme interprète. Alors voici une question qui est assez longue et si vous vous apercevez que ma traduction n'est pas tout à fait correcte, je vous demande de bien répondre à sa question.

I've just said that I've been asked to act as an instant interpreter, and I've asked Mr. Ryan to make sure that he understands the question well, that at least there will be some similarities between what I'm just about to translate and what Miss Patenaude has said.

Basically she has difficulty understanding the comparison that Mr. Ryan makes of the Ombudsman with a journalist. He seems not to understand the difference, that the powers are totally different. The Protecteur du Citoyen, the Ombudsman does not have access to information that the journalist seems at times to be able to obtain, and the role is not exactly the same. She also, to cut the question short, refers to Bill 22 when there was an editorial in Le Devoir, more or less throwing it back to Miss Patenaude and saying, "what are you going to do with the report?" And then she was also receiving constant telephone calls from journalists asking whether she was going to submit her report before the election. And of course Miss

Patenaude objected to the pressure that she had from the press: she was ready and had the recommendations that she makes to the government. The press should be there to inform the public of the results of those recommendations; there should not be a sort of a cooperation between the two because both roles are completely different. J'espère, Monsieur Ryan, que c'est là l'essence de la question. I hope this is the essence or the meat of the question.

PANELIST

CLAUDE RYAN

Well, I'll deal with the detailed grievance which was raised first, in the way the press does it, in public and immediately. Was I the author of those articles to which you referred, Miss Patenaude? Was I the author of those articles to which you referred on your role in connection with Bill 22? It's not particularly important but just for my information.

LUCE PATENAUDE

I will see you after.

PANELIST

CLAUDE RYAN

Okay, okay. (applause) Well, I think that illustrates a certain deformation on the part of the Ombudsman. The article was a public document anyway. I don't need to be told about that in private after the session. I'd rather know now and be frank with you.

LUCE PATENAUDE

I don't want to answer because he is not there.

PANELIST

CLAUDE RYAN

Okay but that was a public document anyway and we can deal with that sort of stuff, don't worry about us. I think

the first weakness on the part of the Ombudsman in this situation was not to have explained clearly why she undertook that mandate on the part of the government. That was a very unusual intervention on the part of the Ombudsman, and we were left to make our own interpretations. If the Ombudsman had clearly and immediately explained in public what role was being asked of her, how she intended to perform that role and for what reason she had accepted that particular commission, I think it would have been greatly helpful to the press in interpreting the significance of that intervention.

Now I think as regards your report, we covered it at length in Le Devoir. I think we published it in full, if my recollection is good. I think we published it in full on page 5. Some interpretations or comments may have been erroneous but I think you got your day at least in the pages of our paper as regards the objective content of your report and I think that's how it should have been. It was a very good report in my opinion; I think I wrote that myself under my signature in the Le Devoir.

Thirdly, you refer to your last report. I made a reference to it earlier. I haven't read it, to be frank with you. I noticed there was a section upon your inquiry regarding Bill 22, but you will understand that this comes a little late for the press because we're now being called upon to live with Bill 101. Bill 22 has become outdated and we will return to this when a problem arises in connection with the Ombudsman, but since it is not of burning interest, we keep it in our files and when the question occurs in connection with the Ombudsman, we'll return to it. But that's the way the press functions. We have to make a selection every day among piles of documents which reach our desk, and we have to choose those of the most burning interest.

Now regards the comparative roles of the Ombudsman and the press, I don't think I'm confusing the two roles. I have great respect for the institution of the Ombudsman. I was on very close terms with your predecessor. From the very moment he was appointed, I had frequent conversations with him. I appreciated the spirit in which he approached his difficult mandate, but I had the impression at the end of his term, and that's not based on conversations I had with him though, that he was not as enthusiastic as he had been at the beginning, that he felt he must have another challenge because this one had considerable limitations. And that's not to debase the institution and if I had been called upon this morning to address this group on the role of the press, I would have been delighted and I would have presented a considerably different message. And I'll be delighted to discuss it with you at any time.

PANEL CHAIRMAN

KEN CAVANAGH

Dr. Frank from the audience please.

DR. BERNARD FRANK
Ombudsman Committee
International Bar Association

Up until the last few minutes with that exchange, I thought for a moment we had a panel who could have been moved bodily to another room and they never would have noticed the absence of an audience. The panel, excellent panel, did have so many subjects that I had trouble jotting them down, but I finally did jot five down, and the only reason I make this comment is because there is a confusion of all of these subjects, and they get so blended that I think many of us will be in trouble here. But here are the five topics that I heard, and you'll be interested to note that I do not plan to reply to them.

First the topic of how complaints against the media should be handled. And secondly, how does the media perceive the Ombudsman. And third, what is the role of the press - the media rather, with respect to Ombudsman offices. And fourth, the media itself as a vehicle for the receipt of complaints. And fifth, the confusion arising with the use of the name Ombudsman.

Now I want to talk only to two of them, comment briefly. And the first comment I wish to make is in connection with the confusion arising from the use of the name Ombudsman. If this audience leaves thinking that the confusion arises because a store in Texas is using the name Ombudsman or because Mr. Cooper is using the name, I think that you would find, at least from my viewpoint, that that is an erroneous impression. That is not the most serious problem with the use of the name Ombudsman. The most serious problem with the use of the name Ombudsman is reflected in the United States where, although you've heard reference to four legislative Ombudsmen, there are at least twelve other states who have offices called Citizen's Advocate which invariably become termed Ombudsman or even use the name Ombudsman officially. Now these are appointed by the governors. They lack independence, they are part of the staff of the governor. They lack not only independence, but they lack continuity. As the governor changes, the office changes, and that's the real wrong with the use of the name Ombudsman. It creates in the mind of the public an image that is not accurate. And if one were to go to the state of Oregon for example and recommend legislation for an Ombudsman, I'm quite sure that the

public would remember that the previous Ombudsman appointed by the governor was a person who had served most of his adult life in prisons. And so I wish to make it clear that the problem is not the use by a store, or by the use of the media, but the problem is the use by government agencies of that image which is created by the word Ombudsman.

And the second comment, I wish to make which is really a series of sub-questions is to the question as to what is the role that the media have to play with respect to Ombudsman offices? Is its role to be solely that of a critic, find out what's wrong with an office, and stress that in a newspaper? Is the role of the media to determine what is dramatic news and report that? Or - and I think I parallel Mr. Spears' thought - is the role of the media to explain, to defend, to evaluate and advance another fundamental institution which is an important new element in a democracy? Thank you.

PANEL CHAIRMAN

KEN CAVANAGH

Thank you, sir. (applause) I might point out that the Office that I represent, this conference and this panel have never been afraid to take on big and weighty problems. We're not looking for the simple ones as you suggest we might. There is a point you mention - are the media interested in news? Well a fellow American citizen of yours, Frank Flavin, the Ombudsman from Alaska is in the audience right now and he is having a problem at home because a report, still confidential, had been leaked apparently by a member of the civil service, and it is now front page news. Now if I can transport myself back to two years ago before I began to work for the Ombudsman if I got confidential documents like that on my desk, I'd run with it, we'd go with it. I'd have a conflict of interest now, two years later, as to whether I would, having had the experience of the last couple years - but news is news is news and that's about it. I just mention that in passing, but I think our panel would agree with that too. There may be a lot of esoteric ways we could approach that problem. We have a question now from Dr. Ivany.

DR. RANDALL IVANY
Ombudsman of Alberta

Thank you Mr. Chairman. One or two comments and perhaps a question. First of all I want to compliment Mr. Ryan for his several enlightened suggestions this morning. I found myself helped greatly by these, and particularly where he elucidated

on the fact that the Ombudsman could or should perhaps each year engage in some private conversation with the press. I think this is very helpful and I think this is something I personally stayed away from although we meet from time to time in the local pub. But it still provides an opportunity that I don't take advantage of perhaps as much as I should. I don't think, however, that the Ombudsman is one who should be feared. I think he should be a fighter. Indeed that's going to be the theme of the next International Ombudsman Conference in Israel in 1980, fighter as one aspect of his job.

I found some interesting dialogue. I've been helped a great deal by all the panelists. I found it interesting, for instance, when Mr. Cooper said this morning that people do trust television and then that Mr. Smith said that people do not trust the media. I think we have both sides of the coin here and perhaps there's an element of truth in both. I hope that the Ombudsman never puts himself into the position where it can be said that the people do not trust the Ombudsman.

I would like some elaboration, if Mr. Spears would be willing, on his statement which included the words "self-correcting process". I'm not quite sure whether he means by that that the media itself is capable of a self-correcting process or whether he had some other idea.

Generally speaking, I must say that I get the impression, particularly since Miss LaMarsh has come forward with her report, that media people do tend to play down the power of the media, the power of the press, and that they do to some extent run for cover when it is suggested that there might be a media Ombudsman.

PANELIST

JUDY LaMARSH

That's paranoia. That's what it's called in governments.

DR. RANDALL IVANY

We all share that, I'm sure.

PANEL CHAIRMAN

KEN CAVANAGH

Even a paranoic has enemies.

DR. RANDALL IVANY

The Ombudsman is seen as a means of balancing the weakness of the individual against the power of government, and I wonder - does not the imbalance of the power of the media vis-a-vis the individual call for a balancing force?

PANEL CHAIRMAN

KEN CAVANAGH

Was that a flat challenge then?

DR. RANDALL IVANY

I think so.

PANEL CHAIRMAN

KEN CAVANAGH

Cameron Smith?

PANELIST

JUDY LaMARSH

.....I can tell you what Ontario papers think: - NO!

PANELIST

CAMERON SMITH

Quite the contrary, I would, I say yes, indeed I think there does need to be a balancing force.

PANELIST

JUDY LaMARSH

But that you say is only in the court.

PANELIST

CAMERON SMITH

What I've been talking about is the mechanism for doing that.

PANEL CHAIRMAN

KEN CAVANAGH

You don't think the marketplace, as Judy in fact pointed out a while ago as part of her deposition, that the marketplace and the commercial foundation of the press, of the newspapers, is in itself that balancing factor?

PANELIST

CAMERON SMITH

No I don't think it is entirely, no, I don't think the marketplace is the only thing you can rely on. I think you do have to rely on law. I think you do have to set up better procedures for - as Mr. Cooper says - giving people access, requiring the press to live up to certain standards.

PANEL CHAIRMAN

KEN CAVANAGH

If we could move on then, Claude Ryan.

PANELIST

CLAUDE RYAN

I'd like to add a word on this. I think we must first beware of global judgments in these matters. To think of an institution which could redress all unfair actions in the global field of the press and the media is so considerable that I think it would yield very little in terms of concrete results. I think the first line of action is within each institution and I should

like to point out that in the case of the newspapers which are represented at this table, you have three organs, I don't think anyone would suggest that if a serious person had some criticism to formulate in connection with any of those papers' performance or the ideas which are expressed in this paper, he would be barred access to the pages of those papers. I think the newspapers give an example to a lot of institutions in this country which should be imitated rather than forgotten. I think there are very few institutions which open their doors to the general public or to opposite views or criticism as much as the newspapers which are represented here at least. There are three good examples I think. And I want to make a suggestion to the CBC in this respect. I think much more important than a press council or an ombudsman of the press in Quebec would be the institution of serious mechanisms within the CBC to give a voice to the public, to air the criticism the public has to formulate in connection with its performance. This huge institution has been functioning for over a quarter of a century and it opens its door very little to the general public. If I'm smeared by the CBC, I have no recourse but the law. But if I smear somebody in Le Devoir he can reply to me in tomorrow's edition of the paper and he will be given considerable space if his stuff is good. And we do it all the time. But CBC lives in a shielded climate. And I think it's horrible that a public institution like that one should not have devised more effective mechanisms to deal with the complaints of the public on a very very regular basis.

PANEL CHAIRMAN

KEN CAVANAGH

Borden Spears. Could I mention just now that we're coming into the home stretch of our Conference. Could we all be brief because there are a lot of people I'd like to hear from.

PANELIST

BORDEN SPEARS

All right, I'll be brief. A hundred and one things have come up all of which cry to be dealt with and we're not going to be able to do it. Dr. Ivany asked me personally if what I intend to imply by this term self-correcting process. And it's a little difficult to define it briefly, but what I'm thinking of is the unrestrained mix of ideas published in all the thousand and one

forms of media expression that are going on in this country, and we are inclined to overplay the monolithic character of the press as if it were one thing. The three papers represented on this panel are far from identical to one thing. Judy has sort of implied that it is monolithic and it's commercially dominated. She says correctly that about 75% of the revenue of a newspaper comes from advertisers, but then she says the newspaper puts in the advertisements and what room is left over is devoted to news. The contrary is the case. The news hole is fixed and guaranteed. There is a minimum news hole in most papers that I know of every day. And if there is no advertising in that paper, the news hole will still be there. If the advertising floods in, the paper is enlarged to accommodate the ads but the news hole is fixed and guaranteed. That's just one example of the kind of misrepresentation that I think goes on about the conduct of the press.

Now as to the self-correcting process again, I read recently of a judge in the United States in some difficult case or other who remarked that there is no such thing as a false idea. What he was really saying was that no idea should not be considered. No idea should not have its place of expression. And I think that's where the self-correcting process comes in. That's in the field of opinion and ideas. In the field of news expression where also we encounter a great deal of criticism about the inadequacy of news coverage and the distortion of news coverage, I can only say that I think we all work on the principle that no one news story is ever comprehensive or complete or tells you all that there is to know. But a succession of news stories devoted to this theme which is what every newspaper is doing, adds up in the end to some approximation of the state of the case. And there again you can read any one newspaper any one day and say my god, this is awful. That's bad and that's wrong, and that's wrong and that's wrong, and you'll be right. But you must read that newspaper over the course of three months or a year and then decide whether it has neglected or distorted or misused its information.

Judy talks about paranoia and the press running for cover when it comes to establishing something like a media Ombudsman. I really don't think that's the case, but Judy seems to be arguing, as she did earlier, that because such things as voluntary press councils have sprung up in various countries and have been successful, or show signs of being successful, they should therefore be institutionalized under the government because they're a good thing. Now I don't follow the logic. I think the process that we have is much more promising.

I have one question which I would like to put to Inger Hansen, and perhaps to the other public Ombudsmen here because it puzzles me and I think it's fundamental to this discussion. She remarked that the Ombudsman, the public Ombudsman should be, must be, an aggressive representative of the citizen with a grievance. And that has not been precisely my concept of what the public Ombudsman is. That suggests to me that he's a partisan advocate of the citizen with a grievance and I wonder if he isn't more an investigator and reporter. And doesn't he entertain any and all complaints, but investigate them first? He has really no power to act, has he, to render a decision, to be an advocate!

INGER HANSEN

No, Mr. Spears. What I meant to say and I'm glad you brought it up is that the Ombudsman starts out as a mediator but once you find a valid complaint of maladministration, then as an Ombudsman you have a duty to represent the victim of maladministration vis-vis the administrator and that's where you have to be aggressive. And I think you have that duty.

PANELIST

BORDEN SPEARS

I would like to know how you represent him beyond reporting.

INGER HANSEN

There is no other way but you can persuade and you can twist arms in a friendly way but that's what you do.

BORDEN SPEARS

And is that delineated in your charter that you twist arms?

INGER HANSEN

I don't think legislators use those words.

PANEL CHAIRMAN

KEN CAVANAGH

That gets to the next point in that chain though and

that is the recommendation that finally does come down, the publicity (or lack thereof) of that recommendation - whether an Ombudsman may or may not publish a report at his own wish. Can we move? John Bell has a question I believe please. And while John is asking, Ken Bratton the Assistant Ombudsman for Scotland has a question, if he could make his way to the microphone.

JOHN BELL

Mr. Chairman, I'd like to address this question to Miss LaMarsh principally but I invite all to comment. Miss LaMarsh, against the background of your concept of an Ombudsman for the media with a code of ethics to be enforced directly or indirectly by the Ombudsman at any stage, and against the background of the growing phenomena of investigative reporting in the 1970's would -

PANELIST

JUDY LaMARSH

The growing phenomena?

JOHN BELL

I believe so yes. Would there have been the phenomenal disclosures which we now know as Watergate in the United States? Or closer to home would there have been a Royal Commission into the Fidenham Affair in Ontario? Or would there have been the series of disclosures by Mr. Smith's paper which resulted in the Ontario Select Committee enquiring into the Hydro head office building? Because it's my observation, if I may be permitted, that if there were a code of ethics and if there were means of enforcement, they never would have happened. On the Ontario plane I think it might be fair to say that any code of ethics one may want to formulate for the press might have been breached in some form to effect the disclosures which ultimately resulted in the enquiries to the ends that we all know.

PANELIST

JUDY LaMARSH

Well I'm not sure that there's more investigative reporting. It's my impression there's considerably less, that 20 years ago there was far more of that. I don't know - the three people who

are actively in the newspaper business perhaps could answer that as a fact. But I don't agree with the premise that if there had been a media Ombudsman that it would have in any way affected that. One of the problems is that journalists talk about their profession and about their ethics, and I don't for a moment suggest that any of the three here who represent the press or Ken Cavanagh in his press days is not a person who feels it's a very high calling to be a journalist and who wants people who are thoughtful and knowledgeable to be in that position. It is also a position we take here that it ought not to be just anybody who is nosy who gets in a newspaper. We don't think you should have to have a university education necessarily, but that the high calling of journalism is not as high a calling as it once was. Journalists in most jurisdictions have set up their own code of ethics. I think the only code of ethics which was imposed that I know of from our investigation, was from Italy. And that, I've forgotten exactly what it's called, the League of Journalists or something, is a statutory thing and that because the journalists themselves weren't brought in and it has not met with a great deal of support. But the code of ethics are usually evolved by those who are in the business. And it was the Canadian Publishers Association, wasn't it, that adopted just last summer after three years of struggling with it a code of ethics. Mr. Cameron Smith mentioned that he read from the Report that we wanted this to evolve from a conference of the people, particularly those who felt themselves aggrieved. And what was certainly in our minds was ethnic groups, women's groups, people who didn't have access for one reason or another to any kind of media. And that that process itself would be very salutary, would let out some of the steam and would let individuals understand the process and problems of the journalist as well as letting the journalist understand directly why some of the antipathies there have grown up against the media. From that would evolve a board, principally journalists, who would set up the best kind of code that they thought. Nothing that I've heard on the Watergate thing - and I've followed it very carefully - nothing that I know of in a code of ethics would have stopped really first-rate investigative journalism. It isn't to do that at all. I mean a code of ethics doesn't say thou shalt not tramp on anybody's feet. Hells bells, to suggest such a thing is just preposterous. Of course you tramp on somebody's feet. But what you do in the whole casting of certain groups by the media's interpretation can be a very harmful thing and it has nothing to do with a code of ethics as such. That code of ethics, as I say, would be on journalism principles, just as at one time it was thought that lawyers in their professionalism and doctors in their professionalism could police themselves individually and then it came to associations.

Whether that works well or not I'm not sure, but for instance, the benchers of the Law Society contain how many? Thirty, Arthur? Thirty, thirty-five lawyers and a couple of -

ARTHUR MALONEY

Four lay people.

PANELIST

JUDY LaMARSH

Four laymen. And the same thing has happened with respect to the medical profession. And no one seems to suggest that somehow their traditional role has been hampered. And I don't think anyone suggests that an ordinary lawyer in practice, by virtue of the fact that he's required by statute to belong to the Law Society has thus become an agent of the government. And you know, I may be perfectly dumb, Cameron, but I just don't see why the press itself, which is far more powerful than any particular bar - should find itself the only public scrutiny in an organized kind of way. We just don't meet in minds there and I don't understand what the gap is.

PANELIST

BORDEN SPEARS

Judy, the press has no privileges that anyone else in this country doesn't enjoy.

PANELIST

JUDY LaMARSH

That's true.

PANELIST

BORDEN SPEARS

In my notes - and I skipped over some of this when I was

talking - I had a couple of quotations. If there is going to be an official regulator, we're faced with the question that Benjamin Franklin raised. He said "abuses of the freedom of speech ought to be repressed, but to whom dare we commit the power of doing it?" Instead of a medley of conflicting ideas from which people can make a rational choice, you get the official line.

PANELIST

JUDY LaMARSH

I don't believe that.

PANELIST

BORDEN SPEARS

Well let me give you one more quotation from de Tocqueville. He said "in order to enjoy the inestimable benefits that the liberty of the press ensures, it's necessary to submit to the inevitable evils it creates", and it does create some evils.

PANELIST

JUDY LaMARSH

Well for instance, can I just finish though, from this point of view supposing Arthur Maloney were given by statute the right to be a press ombudsman. Now there's very little difference between Arthur Maloney as a press ombudsman and his factual freedom to act and Judge John Smith who sits on the Superior Court of Quebec or the Supreme Court of Ontario. They both have that kind of freedom. I don't think Arthur Maloney would have taken the job unless he felt -

PANELIST

There are restrictions on what Arthur Maloney can publish about what he does.

PANEL CHAIRMAN

KEN CAVANAGH

Can we stop the internecine warfare at that point and can I ask Mr. Bratton to take the microphone. Mr. Bratton is from Scotland. Ken could you clear this up right away? I have just said that you were an Assistant Ombudsman. We've been talking about that term Ombudsman here in North America. Now the title in Scotland is.....?

KEN BRATTON

The title in Scotland is Commissioner for Local Administration. We are a municipal ombudsman body, not a parliamentary ombudsman body.

PANEL CHAIRMAN

KEN CAVANAGH

Thank you.

KEN BRATTON

I'm glad I'm being heard. I came 3,000 miles to do this. (laughter, applause) And at the risk of straining the old alliance, may I take issue with Monsieur Ryan. He said and it has been heard on the floor already that an Ombudsman must be feared by officialdom. I would not go along totally with that particular viewpoint. I think if an Ombudsman is feared by officialdom then any investigation will be an unsatisfactory one, because no investigation in my opinion can be conducted where fear is present. I would rather say that an Ombudsman should be respected by officialdom.

The second point and perhaps the more important one is his statement that the press is the most important Ombudsman. I like to think in Scotland, where we perhaps do things a little differently, that the press is the voice of the Ombudsman and supports the Ombudsman by publicity. If the press aspires to be the Ombudsman, then I feel that it should be impartial. In other words it should act not only for the complainant but also for the authority against which the complaint is levelled.

May I illustrate this point. The first investigation we carried out where we found maladministration, we issued a report and on opening the newspaper the next day, I read banner headlines, at least I thought I read - Scottish Ombudsman Rapes Town Council. It was in fact - Scottish Ombudsman Raps Town Council. But the point is made, I think, that where there has been an abuse of power, it is important that the press along with other media brings to the public attention this abuse of power in this particular way.

If on the other hand, the complaint is not upheld, I think it is equally important that the press show that the council have acted in anhonourable and correct manner. I'm afraid, Monsieur Ryan, that this does not happen. It doesn't receive banner headlines, it's usually tucked in two lines under the advertisements or between the births, deaths and marriages. I would welcome your comment on this. Thank you. (applause)

PANELIST

CLAUDE RYAN

Well on the first point which you raised, I respect your point of view. Coming from a man in your position, I fully understand it. I give you my impression. I restate what I said earlier that if the Ombudsman is at the same time respected and feared, it will be better than if he is only respected. We may disagree on that. And I'm not suggesting in any way that the Ombudsman should do whatever he can to become a person who is feared. But I think if he performs his job, as fully and thoroughly as possible, a lot of people among officials will come to fear his intervention. You stated a thing with which I would profoundly disagree. You said no enquiry can be conducted if there is fear. Well there would be no public enquiries in a lot of areas if this principle were to be accepted blindly. I think a lot of enquiries are conducted in spite of the fears which they raise among people who have things to hide. And it's good that there should be fear involved, you know. I would not subscribe to that in principle at least though I understand in practice your statement may apply in a lot of situations, but not in principle. As regards the coverage which is given to the work of the Ombudsman, well I'd be disposed as a newspaper editor to listen to grievances in this area and to examine with the authorities on the other side how we can help improve our performance in this respect. This year we missed the Ombudsman's Report in Le Devoir. We used to give very good coverage to it, I think much more coverage than any other paper has done in Canada for the work of Ombudsmen in other provinces. But this year we were much poorer, and I confess to that very humbly, but we've paid much attention to the work of the

Ombudsman until now. I would not say it applies to the entire press, but on the whole the press in Quebec were impressed originally with the novelty of the institution and they would give it the benefit of doubt to start with. But if the documentation which emanates from the Ombudsman's Office, the annual reports and other documents, are rather impersonal, gray, the press may lose its interest in them. And you may tell me that we should maintain our interest, and I will agree with you. But when I return to Le Devoir this afternoon my news editor will tell me, well don't bother us with your friends at the Ombudsman's Office, we have hot news here. We've got to deal with it. But that's the problem, that's the problem. I fully understand your remarks and I'll take them to my colleagues when I return.

PANELIST

CAMERON SMITH

May I make one small comment?

PANEL CHAIRMAN

KEN CAVANAGH

A small one, yes.

PANELIST

CAMERON SMITH

Very small. I notice a similarity in what you said, sir, and with something that Dr. Henry said. You said the press should support the Ombudsman. Dr. Henry said we should defend the Ombudsman. I said we should do neither. It is not our job to support or defend the Ombudsman. Our job is to report what the Ombudsman does, and I think there's a very substantial difference between the two.

PANEL CHAIRMAN

KEN CAVANAGH

Time is the problem for all of us, including Ombudsmen, but

Margaret Campbell, Q.C., I believe has one last question or statement.

MARGARET CAMPBELL, Q.C., M.P.P.

Thank you Mr. Chairman. I was very heartened by what was said by Mr. Spears with reference to the reporting of the Ombudsman of Ontario. I take it that he is as concerned as many of us are at the problem arising where the Ombudsman does engage in the production of a significant report and where because of confidentiality that report can not be released either through the Speaker or the Select Committee, but rather must be left to the discretion of the ministry of government as to whether it would be released. It seems to me that this is a significant and important area for us in this province, and I congratulate the Star if I understood him correctly, for his perception in this area.

PANEL CHAIRMAN

KEN CAVANAGH

Thank you very much. Time does go on. Monsieur Ryan is just now apologizing that he does have an aircraft to go back to the news desk in Montreal to get those complaints that Ken Bratton was talking about a little while ago. Thank you again Monsieur Ryan.

I have one final comment about something I think we're all going to be hearing enough of in the future. We're talking about the responsibility of the press. It goes back one further step to a movement that has begun in the United States, and actually Monsieur Ryan's paper in Montreal is in the forefront of it too, with regard to responsibility by the reporters and by the editorial staff within that newspaper for the product that is turned out. I don't mean to turn this into what in the United States is turning into something of a labour-management argument but that, I think, is a point that has to be developed hand in hand with any sort of responsibility for the publishers too.

Thank you very much panelists and thank you very much audience, and Glenn Hainey, your Session Chairman.

GLENN HAINEY

Thank you, Ken. Just before winding up this session, I'd like to remind everybody of the reception and luncheon which will be following this session immediately in the Dominion Ballroom North which is the adjoining room. Anyone who wishes to attend the luncheon and who does not have a ticket can acquire one at the registration desk just outside in the hallway. The guest speaker at the luncheon will be Dr. Randall Ivany, the Ombudsman from the Province of Alberta. The afternoon session which will deal with the subject of The Ombudsman and the Civil Service will begin at 2:00 p.m.

This session is now adjourned.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 15, 1977

Luncheon Address

Dr. Randall E. Ivany
Ombudsman of Alberta

RECEPTION AND LUNCHEON

CHAIR

GEORGE W. MALTBY
Ombudsman of Manitoba

Gentlemen, may I have your attention please. We're starting a little bit earlier whilst you're having your dessert so that Dr. Randall Ivany can do justice to his presentation. Before I introduce Dr. Ivany I wish once again to thank our panel participants this morning in a very, very fertile discussion on The Ombudsman and the Media. The participants were Ken Cavanagh from the Ontario Ombudsman's Office; Mr. Claude Ryan; Honourable Judy LaMarsh; Mr. Cameron Smith; Mr. Robert Cooper; Mr. Borden Spears. Thank you once again panelists. (applause)

Dr. Randall Ivany, the Ombudsman for the province of Alberta needs no introduction. He's going to address you for 15 or 20 minutes now on a case which he dealt with in the fall of 1976 when he investigated complaints into excessive force which was used by staff at the Calgary Remand Centre. Dr. Randall Ivany.

ADDRESS

DR. RANDALL E. IVANY
Ombudsman of Alberta

Mr. Chairman, honoured guests, ladies and gentlemen. It's a privilege for me to stand before you while you are finishing your dessert. I really perhaps don't need all the time that George has now given me but I appreciate the opportunity to take my time rather than to rush through something which is significantly important. You may not have noticed that Arthur Maloney had to leave and he apologized profusely for this. But he did assure me that Gerald Tracey from the Eganville newspaper was present and that was as important as if Arthur was here. I have no doubt about that. I have been to Eganville and if anybody hasn't been to Eganville don't leave Ontario before you do go to Eganville. Number of things that I want to say today particularly to deal with the case that Mr. Maltby mentioned. And so to perhaps take a little different slant than the Ombudsman generally does with regard to his role as a legislative ombudsman in society.

The International Ombudsman Steering Committee at its Paris meetings in May agreed that the major theme for the Second International Ombudsman Conference should be, "The Ombudsman as Mediator and Fighter". In proposing this theme, Dr. Nebenzahl explained that it signified the dual role of the Ombudsman, that the Ombudsman must be conciliatory in dealing with most cases, but he must also be prepared to fight when the need and circumstances demand it. Mr. Justice Tikaram agreed with Dr. Nebenzahl and suggested that a third ingredient be added--the concept of the Ombudsman as reformer.

In many ways the Calgary Remand and Detention Centre case which I will speak of today brings together all three of these ingredients--mediator, fighter, reformer.

At the First International Ombudsman Conference, Mr. Arthur Maloney reminded us of the powers of the Ombudsman. At that time he stated to his colleagues:

"I am sure you share my view that the powers of the Ombudsman should not be used simply as an exercise in muscle flexing since this may not only make it more difficult for the Ombudsman to obtain the true facts but may seriously jeopardize future communication with the Government and perhaps the Legislature, and may even impair the credibility of the office. What I am saying basically is that the formal powers of the Ombudsman should not be lightly or impetuously exercised, and each power should be used with a definite purpose in mind."

There are circumstances which demand their use. In the course of our investigation of allegations that Corrections Officers at the Calgary Remand and Detention Centre had employed excessive force in handling certain inmates, virtually all of the formal powers accorded the Ombudsman in Alberta had been used, or their use contemplated.

The Alberta Ombudsman Act, Section 11(2) provides that the Ombudsman may make an investigation on a complaint made to him by any person, or of his own motion. In October 1976, as a result of confidential information brought to my attention by members of my staff, an investigation on my own motion commenced into allegations that isolated incidents had occurred in which excessive force had been employed by Corrections Officers.

What began as an investigation of a single incident, expanded to include any and all incidents alleged to have occurred. Officers and inmates were interviewed by my assistant and it became apparent in examining the transcripts of these interviews and discussing them with my assistant, that dramatically opposing testimony was being given, not only across the statements of guards as opposed to inmates, but amongst Corrections Officers interviewed. Additionally, certain Corrections Officers were reluctant to participate in interviews with my assistant and insisted that a representative of the Alberta Union of Provincial Employees be present.

I therefore concluded that it was essential in this major investigation for an informal hearing to be convened before me. I also decided that testimony at this hearing would be given on oath, for the first time in the history of the Alberta Office of the Ombudsman.

Initially, several Corrections Officers expressed their objections to being interviewed by the Ombudsman. It was necessary to make them aware of the power of the Ombudsman to formally summons them to appear. However, invitations alone proved sufficient.

At these hearings a Solicitor for the Alberta Union of Provincial Employees represented all but a few Officers. Many of the Corrections Officers sought the protection of the Canada and Alberta Evidence Acts for any self-incriminating statements they made during their testimony.

Regrettably, the evidence presented by some of the Corrections Officers at these hearings was, at time, less than adequate as it related to the allegations of excessive force employed by Corrections Officers in the handling of inmates.

There is no doubt in my mind that some of the Corrections Officers appearing before me were being over-protective, not only insofar as any personal involvement but also with respect to the involvement of other Officers. It is inconceivable to me how certain Officers could have so little direct evidence and sometimes a complete lack of evidence with respect to certain incidents. It was established that they were on the scene at the relevant time and there was no apparent reason why the incident was not witnessed.

Upon reaching the conclusion that there was convincing evidence of attempts by Provincial Government employees to impede an investigation of the Ombudsman, for the first time in the history of the office, I issued a warning that hence-

forward, I would consider recommending the strongest possible disciplinary action against the Provincial Government employees involved. I also emphasized the provisions of the Alberta Ombudsman Act which provides that a person found guilty of obstructing the Ombudsman is liable on summary conviction to a fine of \$500, or in default of payment, to imprisonment for a term not exceeding three months.

The atmosphere of confrontation went beyond the actual investigation however. The Solicitor General's statements, as they appeared in the media, took issue with aspects of the Report I released, by way of a press conference, following discussion with the Minister, Department, Union, and the circulation of the Report to the Executive Council.

Shortly after the release of the Report, a series of three prominent advertisements was placed in major Alberta newspapers by the Alberta Union of Provincial Employees. They seemed to be part of a campaign to discredit my Report. I was informed by the President of the Union that the purpose of the advertisements was to reinforce the Union's position that management within the Department was responsible for the excessive force and should share that responsibility. Nonetheless, their tone was of great concern to me.

Also, there was an attempt by the Opposition in the Legislature, at its sittings in the spring of this year, to have the Ombudsman appear before the Assembly to answer questions from Members on the investigation and Report. This motion was not passed, though it remains on the Order Paper.

In terms of the Ombudsman as Mediator, I have attempted to provide additionally, information to the Department on aspects of my Report and parts of it remain under discussion with the Department. Certain of the recommendations contained in my Report were wide-ranging and any action that may result will be over a period of time, most likely after lengthy study and discussion, not only within the Department but between ourselves and the Department.

All of which brings me to the Ombudsman as Reformer. In my Report I recommended that efforts be made to scale down the current use of the "drunk tank" at the Remand Centre by all reasonable means. No other aspect of this investigation was as repugnant to me as the "drunk tank" conditions. I suggested that some of the non-violent individuals confined in such a facility could be lodged at a detoxification centre.

It is a disturbing problem to deal with. It appears that organizations are reluctant to deal with the chronic, hard core, skid-row inebriate. Many of those who assist in the

rehabilitation and treatment of alcoholics deal only with those who volunteer for treatment, those who are seeking help.

It is not a pleasant task, handling the chronic "hard core" alcoholic. The need is, however, there! It has been reported that there are 250 "hard core" skid-row inebriates in Edmonton alone, and there are, I am confident, comparable figures for centres across Canada.

The concept of detoxification centres is not the total answer. A report on the Ontario Detoxification System by the Addiction Research Foundation of Ontario raises many issues. Persons admitted to the pose-detoxification facilities do not have lower rates of detox readmission and drunkenness arrests, than those who are not admitted. Further, only about 10% of detox admissions are successfully referred to such facilities on discharge, according to the Ontario report. On the average, arrests after detox admission were not found to decline. Readmission rates were as high as 70% over two years.

The report of the Foundation notes that accounts suggest that there has been a deterioration in the physical health of the public inebriate. One possible explanation offered for the perceived changes is related to changing practises which confine skid-row inebriates less and for shorter periods of time. In short, they have more time to drink and fewer interruptions of drinking sprees. They have, in this sense, less time to re-build physical strength.

The philosophical issues are troubling. They range from questions or obligations of society to provide some type of service to this group, to questions related to the type of service that should be provided and at what charge on society as a whole.

Does society have the right to compel treatment? Should we, or indeed, can we? If we provide only shelter with no effective treatment are we simply prolonging life for this group?

Difficult questions, yet ones which arise as a result of current discussions following my Report in Alberta. The current situation is unacceptable, yet alternatives are not readily available. The problem also is not confined solely to Alberta and in this sense poses a challenge to all of us gathered here, the challenge to be a reformer.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 15, 1977

Afternoon Session

"THE OMBUDSMAN AND THE CIVIL SERVICE"

CONFERENCE IS BROUGHT TO ORDER

KEITH HOILETT

Special Assistant and Legal Officer
Ombudsman of Ontario

Good afternoon, ladies and gentlemen. I'm Keith Hoilett from the Ontario Ombudsman's Office. At the next sound of my voice, following two seconds of silence, the official commencement of the afternoon session will take place.

Welcome to the audience and to the panel. Before I pass the conference over to the panel chairman, I must communicate the regret of the scheduled conference chairman for this afternoon, Dr. Keith Reynolds, the Deputy Minister of the Ministry of Natural Resources for Ontario. Representing him this afternoon is his Assistant Deputy Minister Mr. Art J. Herridge, and in as much as everyone does not have biographical notes on Mr. Herridge, I'll read the brief notes that I have relating to him.

Mr. Herridge, a native of Montreal, Quebec, graduated from the Faculty of Forestry of the University of Toronto in 1949. Following his graduation he joined the Forest Protection Branch of the then Ontario Department of Lands and Forests, serving first in Kapuskasing and Saulte Ste. Marie. In 1959 he transferred to the Personnel Branch at head office for a year of training and in 1959 became supervisor of the Silviculture Section of the Timber Branch and in 1966 became head of the Personnel Branch. In January 1967 he was made Regional Director for the Northeastern region. He remained until July 1, 1968 when he was named Chief of the Timber Branch. In April 1971, a departmental reorganization saw Mr. Herridge appointed to the position of Executive Director of the Resource Products Division now the Division of Forests. On September 5th, 1972 he was appointed to the position of Assistant Deputy Minister for Resources and Recreation and in that capacity is concerned with the working of the divisions of forest, mines, fish, wildlife and parks. Mr. Herridge was a member of the Council of the OPPA from 1959 to '68 and was president in the years 1964, '65 and '67.

Normally the Chairman here is flanked by two charming young ladies who are prepared to assist anyone who has any specific needs. I'm sure they'll appear shortly. So in the event that anyone should at any time have any needs to be administered to, I'm quite sure that if you beckon discreetly those needs will be met. And with that I pass the afternoon session over to the conference chairman, Mr. Art Herridge.

PANEL CHAIRMAN

ARTHUR J. HERRIDGE
Assistant Deputy Minister of Natural Resources
Province of Ontario

Thank you very much, Keith. Ladies and gentlemen, as Keith has pointed out, it was originally intended that this panel be chaired by Dr. Keith Reynolds, a long-time friend and associate of Mr. Maloney's and I suspect it was that association that led Mr. Maloney to invite Dr. Reynolds to chair this particular panel on the relationship between the Ombudsman and the civil service.

It is unfortunate that Dr. Reynolds is unable to be here, both for him and you. But in his absence I will attempt to speak to the comments that reflect the experience that we have had in the Ontario Ministry of Natural Resources since the creation of the Office of the Ombudsman in the Province of Ontario. I propose to speak for a few minutes and then ask each of the panel members to make his comments and presentation, and then if there is any discussion across or amongst the panel members, this would take place and then the subject is open for consideration, discussion, comment and questions from any of you here.

The topic of the Ombudsman and the Civil Service is one that I know is going to provoke spirited discussion and questions by my fellow panel members and, I hope, by participants from the floor. I could outline for you in considerable detail the various issues to which we could address ourselves in this discussion. However, I think I will try to limit myself merely to indicating what those issues are by making a few personal observations on each of them rather than by trying to describe them in unduly abstract terms. The remarks that I will make here today are basically the result of personal experiences and observations through the years of the realities of government administration and more particularly, the result of recent experiences between the Office of the Ombudsman and the Ontario Ministry of Natural Resources. Having said this, I think that I can now address myself to the actual topic of our discussion here this afternoon.

A central topic underlying the subject matter of the Ombudsman's relationship with the civil service is the whole business of trying to determine what the civil service's attitude towards the Ombudsman really is and what kind of effects the Ombudsman has on the functioning of the civil service. I am aware that survey studies indicate that most civil

servants do not perceive the Ombudsman as a serious threat to them and do not alter their behaviour as a result of his existence. I would suspect, however, that most civil servants do at least have in the back of their minds a constant realization that the Ombudsman could at some future date enter the scene and challenge the validity of the decisions being made today. The knowledge of a potential investigation of one's work must inevitably have some effect on the mental climate in which the work is carried out. It is for this reason that I think it is absolutely essential for a government department or ministry to develop actively with the Ombudsman's staff a climate of mutual trust, openness and candour. I don't mind telling you that in the Ministry of Natural Resources, many of us initially had certain qualms and apprehensions about the prospect of many of our often difficult administrative decisions being closely scrutinized by persons who were not necessarily conversant with the particular problems and perspectives of our fields of operation. However, after some two full years of experience with the Ombudsman's staff, we have found that virtually all our initial qualms and apprehensions have turned out to be groundless.

I would be doing it a grave disservice, however, if I were to leave you with the impression that the Ombudsman's office does not have significant effects upon the functioning of the civil service, because it does. The very necessary investigations carried out by the Ombudsman's staff inevitably mean that various and substantial demands upon the human and financial resources of the Ministry must be made. We all accept this as necessary for the proper conduct of investigations. However, because of our government's program of fiscal constraint, there has been no additional allocation of financial or staff resources in recognition of this new demand on our time, with a consequent postponement or curtailment of some work in the civil service.

Another thing that civil servants are concerned about is that decisions which have been arrived at after a great deal of study and careful thought will suddenly be brought into question and perhaps even dramatically reversed as a result of a very brief investigation by people, who however well-intentioned, will not likely have professional training and experience and thus cannot possibly have acquired an adequate understanding of the issue.

I would stress of course that civil servants do not consider themselves to be infallible or beyond scrutiny. They do, however, take justifiable pride in their performance of thorough studies and careful deliberation. It is very disheartening to be faced with the prospect of having one's work overturned, particularly in instances where it is perfectly

plausible that two different study groups, working with the same data, will arrive at two differing conclusions.

These last few observations lead directly into a consideration of the second major topic in this discussion, namely, that of the proper relationship between a deputy minister and the Ombudsman, and the appropriate course of action for a minister to take in the event that his deputy disagrees with a conclusion and recommendation set forth in the Ombudsman's Report. I think that the chief interface between the Office of the Ombudsman and the civil service must be the relationship that exists directly between the Ombudsman and the respective Deputy Minister. In this relationship, the Ombudsman's staff and the civil servants must take care not to cooperate to such an extent that the best interests of the complainant are jeopardized, and yet on the other hand they must reject that kind of antagonism and confrontation that inevitably renders inoperative the very system within which we work and its potential for effectiveness. Of course complete agreement between the Ombudsman and the Deputy Minister will not always result. In cases of such difference, the Ombudsman can take his position to the legislature via the appropriate legislative committee, while the Deputy Minister can take his position to the Premier via his Minister.

There are those who have expressed concern that by referring such controversies to the political system for resolution one could cause an undermining of the Minister-Deputy Minister relationship. I do not believe that there is any basis for such a concern. In our system of democratic government, the ultimate decision in cases of dispute is with the political process and must always be so. Certainly deputy ministers must accept that as one of the basic rules of this system.

For a moment, I will digress on that particular point because I think that fundamental to the relationship between the civil service and the Ombudsman is the relationship between the Deputy Minister or civil service and the political process in general. A number of years ago, when I was on a Senior Officer's course, the present Treasurer of Ontario, Mr. McKeough who was then a Minister without Portfolio and had just entered the provincial Cabinet, was the luncheon speaker at the course.

He had listened to the morning's discussion amongst the groups of senior civil servants from a variety of agencies within the province who were discussing - and in general terms complaining about - the decision-making process within government. The view being expressed was that the civil servants could likely make better decisions and could make them faster. I don't think it was intended that Mr. McKeough speak to that

particular point at his luncheon address but he couldn't resist. And when he spoke, he made the point that he felt that if senior civil servants in government wanted to be the final decision-makers and be responsible for those decisions, they should join the political process and put their jobs on the line every four or five years, the same as elected members of the legislature. And I think that's something that many senior civil servants forget.

The question of the course of action a Minister should take in the event of a disagreement between his Deputy and the Ombudsman is an intriguing one. I realize that some of you here will take the position that the Minister should not automatically favour the position of his deputy but should try to view both positions with impartiality. The comment that I would make here is that realistically a Minister is likely to be basically supportive of his Ministry's civil service. After all, the Ombudsman is reviewing what are fundamentally administrative decisions, and the Minister is well aware of the difficult, often sensitive deliberations that have taken place prior to the formulations of the Minister's position. The Minister should certainly not try to exacerbate the situation by lining up his Ministry's staff in an unnecessary adversary relationship with the Ombudsman. However, common administrative practice dictates that once the Minister is convinced of the reasonableness of his administration's position on the matter, he will vigorously defend that position.

I think that the preceding pretty well covers the main points that I want to make in getting this panel discussion on its way. To have the panel continue its presentation, I would now like to introduce to you Mr. Robert Normand, Deputy Minister of Intergovernmental Affairs, Province of Quebec. Robert.

PANELIST

ROBERT NORMAND

Deputy Minister of Intergovernmental Affairs
Province of Quebec

Monsieur le Président, Monsieur Maloney, Madame et Messieurs les Protecteurs du citoyen, Mesdames et Messieurs.

Mr. Chairman, Madam and gentlemen Ombudsmen, ladies and gentlemen.

I have the honour of having been one of the main draftsmen of the Ombudsman Act of Quebec, one of the first in Canada. It is thus very pleasant for me to be able to participate today in the evaluation of this new democratic institution in order to try to determine whether the infant which I helped to spawn remained faithful to paternal expectations or became juvenile delinquent who finds pleasure in throwing stones into the glass cage inhabited by civil servants.

After a few youthful mistakes as legislative counsel of the Quebec government, I took on the difficult job of Deputy Minister of Justice of Quebec for five and a half years. In view of the fact that the population is generally convinced that justice is not for this world, you will easily understand that being responsible for some 14,000 employees in sectors as different as the police, the prisons, the courts of justice, the rental control board, the issuing of alcohol permits, etc., that I would have become one of the favourite clients of the Ombudsman of Quebec, especially since this man is now a woman.

My experience permits asserting that the Ombudsman helped me considerably to furnish a better measure of justice to people alone and faced with an increasingly complex administrative apparatus and that the excellent relations that I was able to establish with the Ombudsman even permitted me to entrust to him difficult dossiers which were beyond his strict jurisdiction.

However, by its very own nature, this institution intends to protect the rights of the individual and in view of asserting its credibility towards its citizens, the titleholder is tempted to stretch the interpretation of his mandate and the laws governing the cases he has to review. In doing so, he may become a guarantor in the hands of politicians or civil servants who will hesitate to take decisions which are politically interesting but difficult to justify at the administrative level and he might even be used as an instrument for the taking of decisions contrary to the public interest.

In other words, my observation of the role of the Ombudsman causes me to see him as a most useful, one might even say indispensable, personage in the Government set up but because of his duties, he may be made to look like he is neglecting to serve the interests of the collectivity especially when he is used as a bait by politicians or top officials with a Machiavellian bent. Obviously, I am not referring to myself.

May I illustrate this by three examples which I experienced and which seem to characterize very well the facts

concerning the function of Ombudsman vis-a-vis the civil service and from which certain useful lessons can be learned.

Il y a un peu plus d'une dizaine d'années, la Surêté du Québec remerciait de ses services un policier qui était soupçonné d'avoir fait des avances homosexuelles à un prévenu qu'il venait d'arrêter dans un bar. L'enquête de discipline fut très sommaire, et le renvoi encore plus. Quand la fonction d'Ombudsman fut créée, l'ancien policier rendit visite au Protecteur du Citoyen en alléguant son innocence et l'insuffisance des motifs ayant conduit à son renvoi.

Après une enquête poussée démontrant que les antécédents de l'ancien policier étaient difficilement compatibles avec l'attitude qu'on lui reprochait et que par contre, les caractéristiques de son accusateur laissaient planer des doutes sur l'authenticité de sa version, l'Ombudsman recommanda aux autorités du ministère de la Justice et de la Sûreté du Québec la réintégration du policier.

Les dirigeants de la Sûreté du Québec estimèrent que l'Ombudsman portait atteint à leur autorité et que l'acceptation de sa recommandation pourrait compromettre, de façon irrémédiable, la réputation de leur bon jugement. Le problème fut évidemment porté sur le bureau du sous-ministre, l'un de mes prédécesseurs.

L'acceptation du point de vue de l'Ombudsman pouvait entraîner une détérioration des saines relations devant exister entre les autorités policières et les autorités civiles du ministère; son refus pouvait causer préjudice à un individu, encore que la preuve de son innocence ou de sa culpabilité n'ait pas été établie hors de tout doute.

Mon prédécesseur s'employa alors à trouver un emploi équivalent à celui de policier dans la fonction publique québécoise pour cet ancien policier, et le Protecteur du citoyen n'insista pas davantage sur sa recommandation. Il exigea cependant qu'une indemnité de quelques milliers de dollars soit versée à l'ancien policier pour les dommages subis.

Les autorités policières refusèrent de donner suite à cette nouvelle demande, de même que le nouveau sous-ministre.

Le niveau de rémunération des policiers ayant augmenté beaucoup plus rapidement que celui des fonctionnaires, il fut décidé de reclassifier l'ancien policier à un niveau supérieur, de façon à réduire l'écart entre le traitement attaché à ses nouvelles fonctions et celui dont il aurait bénéficié s'il avait été réintégré dans la Sûreté du Québec.

Les autorités de la Sûreté du Québec sont heureuses; les autorités du ministère de la Justice sont heureuses; l'ancien policier accepte son sort et l'Ombudsman n'a pas insisté de nouveau sur ce dossier qui est encore pendant.

Le cas a ensuite été rapporté par le Protecteur du citoyen dans son rapport annuel comme ayant été partiellement réglé, à la satisfaction des intéressés.

Mon deuxième exemple porte sur les séquelles de la crise d'octobre de 1970 au Québec.

Plusieurs personnes furent alors arrêtées par les policiers qui se fondaient sur des soupçons dont l'authenticité ne s'est pas toujours avérée juste; les victimes réclamèrent des dommages pour arrestation injustifiée.

Le ministre de la Justice, dans un souci d'équité pour ces victimes, demanda alors à l'Ombudsman d'examiner chacun des cas qui lui avaient été soumis, de faire enquête et de lui produire une recommandation sur le montant des dommages raisonnables qui pourrait être payé à ces victimes, même si la loi organique du Protecteur du citoyen ne lui donnait pas compétence pour ce genre d'affaire. Sur les recommandations de l'Ombudsman, le ministre s'adressa alors au Conseil du Trésor afin de faire sanctionner le versement des indemnités ainsi recommandées en faveur des victimes.

Le troisième cas typique concerne un "festival pop" qui devait se tenir dans la région de Québec.

Les organisateurs désiraient réaliser un profit considérable en investissant le moins possible dans l'entreprise; ils sollicitèrent un permis du ministère du Revenu et obtinrent, de fonctionnaires de ce ministère, certaines assurances en ce sens.

Ils dépensèrent certaines sommes d'argent, assez considérables, afin de réaliser leur objectif.

Entretiens, un festival de même nature eut lieu à un autre endroit du Québec et il fut un échec spectaculaire; les services publics durent dépenser des sommes considérables au titre de la sécurité, des installations sanitaires, des soins médicaux, etc. pour liquider l'opération.

Devant cet échec, l'octroi du permis fut refusé aux organisateurs du festival de la région de Québec et ces derniers se rendirent voir l'Ombudsman.

Le Protecteur du citoyen recommanda le versement d'une somme considérable, à titre de dédommagement pour les organisateurs

Un haut fonctionnaire du ministère de la Justice accepta la recommandation du Protecteur du citoyen, le sous-ministre revisa le dossier et nia le bien-fondé juridique de cette recommandation mais le ministre, pour des critères d'équité, était favorable à son acceptation.

Le paiement d'une somme d'environ \$45,000.00 dollars fut alors décidé.

Le Conseil du Trésor manifesta des réticences considérables mais le montant précité fut finalement payé.

Vous réalisez ce qu'aurait pu être le rôle de l'Ombudsman dans cette affaire si les organisateurs du festival avaient été des amis politiques du ministre.

(Some ten or more years ago, the Quebec provincial police fired a policeman who was suspected of having made homosexual advances to an accused whom he had just arrested in a bar. The disciplinary investigation was very summary and his dismissal even more so. When the function of Ombudsman was created, the former policeman went to see the Ombudsman alleging his innocence and the fact that there were insufficient motives to justify his dismissal.

(After a thorough investigation showing that the antecedents of the former policeman were incompatible with the attitude with which he was reproached and that on the other hand, the characteristics of his accuser left doubts concerning the authenticity of his version, the Ombudsman recommended to the authorities of the Justice department and the Quebec provincial police that the policeman be reinstated.

(The directors of the Quebec provincial police felt that the Ombudsman was attacking their authority and that to accept his recommendation could irretrievably compromise the reputation of their good judgment. Obviously the problem came to rest on the Deputy Minister's desk, one of my predecessors.

(To accept the point of view of the Ombudsman could bring about a deterioration in the sound relations which should exist between the police authorities and the civil authorities of department. Its refusal could cause prejudice to an individual especially since proof of his innocence or guilt had not been established beyond reasonable doubt.

(My predecessor then sought to find an equivalent job to that of policeman in Quebec civil service for the former policeman and the Ombudsman did not insist upon his recommendation. He demanded however that an indemnity of some thousands of dollars be paid to the former policeman for the damages he had suffered.

(The police authorities refused to accede to this new demand as did the new Deputy Minister.

(The level of remuneration of policeman having increased much more rapidly than that of civil servants, it was decided to reclassify the former policeman at a higher level, in order to reduce the gap between the salary attached to his new job and that which he would have had if he had been re-instated in the Quebec provincial police.

(The authorities of the Q.P.P. are happy - the authorities of the department of Justice are happy - the former policeman accepts his lot and the Ombudsman has not again insisted upon this dossier which is still pending.

(The case was then reported by the Ombudsman in his annual report as having been partially settled to the satisfaction of the interested parties.

(My second example bears on the sequels of the October Crisis of 1970 in Quebec.

(Several persons were arrested at that time by the police basing themselves on suspicions the authenticity of which was not always proven correct. The victims claimed damages for unjustified arrest.

(The Minister of Justice, in a spirit of equity for these victims, then asked the Ombudsman to examine each of the cases which had been submitted to him, to investigate and to produce a recommendation for him on the amount of reasonable damages which could be paid to these victims, even though the Ombudsman's act would not give him jurisdiction for this type of case.

(On the recommendations of the Ombudsman, the Minister then went to the Treasury Board in order to sanction the payment of indemnities thus recommended for the victims.

(The third case concerns a "Pop Festival" which was to have been held in the Quebec region.

(The organizers wanted to make a large profit by investing the least possible in the enterprise. They requested a permit from the Department of Revenue and obtained from the civil servants of the department certain assurances in this direction.

(They spent certain sums of money, rather considerable sums of money, in order to reach their objective.

(In the meantime, a festival of the same type took place in another region of Quebec and was a spectacular flop. Public

services had to spend large sums of money for security, for sanitary installations, medical care, etc., in order to liquidate the operation.

(In view of this failure, the permit was refused to the organizers of the festival of the Quebec region and the latter went to the Ombudsman.

(The Ombudsman recommended the payment of a large sum of money as compensation for the organizers.

(A top official of the Department of Justice accepted the recommendation of the Ombudsman, the Deputy Minister reviewed the dossier, denied the legal basis of this recommendation but the Minister, in the interest of equity, was favourable to its acceptance.

(The payment of a sum of approximately \$45,000 was then decided upon.

(The Treasury Board showed considerable reluctance but the above mentioned amount was finally paid.

(You realize what part the Ombudsman would have played in this case if the organizers of this festival would have been political friends of the Minister.)

I really think that these three examples call for certain comments which permit thoroughly grasping the relations between the Ombudsman and the civil service.

1. The Ombudsman, because of the investigative powers which he has and of the time which he can in all quietude devote to such investigations, becomes an excellent instrument to check facts in an exhaustive fashion, which a civil service, no matter how efficient it may be, cannot always do.
2. The Ombudsman can only acquire the credibility which he should have with civil servants in order to do his job well if he accepts to consult them before publicizing his point of view in order that the civil servants may settle the litigious matter in a friendly way rather than to become themselves a victim of the Ombudsman to the advantage of one who is justiciable.
3. Lower-ranking civil servants are given to either accept too easily the recommendations of the Ombudsman, for the sake of peace, or to want to systematically contest them considering them to be attacks against their authority or

their integrity. This type of situation which I have frequently experienced can only be countered in the measure where relationships of absolute trust exist between an open-minded Deputy Minister and a reasonable Ombudsman.

If such relations exist at the highest level, the lower-ranking civil servants will feel this and will be inclined to listen more to the Ombudsman, knowing that their attitude will be the subject to re-examination by their superiors.

4. An Ombudsman whose judgment would be clouded by an unbridled desire for publicity, as the temptation seems sometimes to exist, would risk alienating the confidence of the top echelons of the civil service and to no longer be able to settle the concrete cases which he has to deal with and consequently to see his public image rapidly deteriorate. Conversely, an Ombudsman who is too conciliatory with the civil service could render serious disservices to those seeking justice and thus lose his credibility.

If the public service is a tight rope on which it is difficult to maintain one's balance for a long time, the job of Ombudsman surely consists in dancing on a wire at dizzying heights.

5. The Ombudsman can be very useful to a politician or a civil servant who must make a decision which could be strongly criticized at the political level or even at the administrative one. He has then but to refer the whole matter to the Ombudsman and to get a recommendation on which he can then base himself to implement the decision he was supposed to take, without running the danger that making this decision could cause him without the help of the Ombudsman.

The Ombudsman, while being a useful channel for the citizens, can become a precious instrument in the hands of a civil servant who knows how to use it adequately.

6. The Ombudsman being inclined to favour the individuals who have recourse to him by interpreting the regulations in their favour can be led, if he deals with obliging civil servants, to favour the spending of public funds that the public interest does not always necessarily warrant. This type of situation presents increased dangers if the Ombudsman is the subject of manipulations by politicians refusing to bear themselves the burden of

the favouritism which they want to show to certain of their friends. Happily I have no concrete example which could illustrate this thesis in convincing fashion, but the situations which I have experienced have led me to believe that this danger could be lurking within the Ombudsman's Office in a pernicious fashion without his necessarily being aware of it himself.

These are the main considerations which may be seen from the examples which I have given you and which seem to me to characterize the relations which I was in a position to observe between the Ombudsman and the civil service. There are certainly many other characteristics which we can go into in the course of the discussion which will follow.

Before concluding, I would like to answer a question which seems to fascinate several university people and even the experienced employees of the rather anguished Ombudsman.

One wonders what happens when a Minister and a Deputy Minister have different opinions concerning a recommendation of the Ombudsman.

This question, theoretically complex, is in fact rather simple. The supreme authority of a department being the Minister, it is the duty of the Deputy Minister to expose a situation honestly to the Minister, possibly to have an opinion different from his, but always to fall in with his decision unless the Deputy Minister feels that he cannot in honesty do so and then he must resign if he feels that the matter is sufficiently serious.

In other words, as long as a Deputy Minister is on the job, he cannot publicly express an opinion different from that of his Minister.

I have seen Ministers resign but one would have to be very pretentious to conclude that the resignation was due to a difference of opinion with his Deputy Minister.

One must always remember that in a democracy the power belongs to those legitimately elected by the people and that a civil servant who would refuse to bow to this requirement of our institutions should be quickly fired, unless he has a statutory power unto himself.

And that perhaps is why the position of an Ombudsman is much more comfortable than that of a Deputy Minister and the Ombudsman should never forget it.

Thank you.

PANEL CHAIRMAN

ART HERRIDGE

Merci beaucoup, Robert. Robert touches in his paper on some elements that were picked up in the opening remarks and that I think will be reflected in the comments of the other panelists, though not necessarily in a consistent fashion. His paper should provide an interesting stage for some of the discussion which will follow.

Our next panelist, Jim Dixon, is the Commissioner for the Public Service of the Province of Alberta, Jim.

PANELIST

JAMES E. DIXON
Public Service Commissioner
Province of Alberta

Thank you, Mr. Chairman. I'll try to make out as best as I can from the left side. Mr. Chairman, ladies and gentlemen, I would firstly like to convey greetings from Alberta and thank you for the opportunity to play a role in this conference, particularly with such a distinguished group of participants. I feel that it is quite appropriate for Alberta to be represented here, especially since Alberta was the first jurisdiction in Canada to embrace the concept of the Ombudsman!

The topic "The Ombudsman and the Civil Service" is very relevant for myself with my responsibilities as Public Service Commissioner relating to that group with which I identify every day - "The Civil Service".

In thinking of the Ombudsman and the civil service, my own research brought to light discussions at the 1975 Ombudsman's Conference. A topic discussed at that conference which I have often pondered myself, and which to my mind exemplifies the difficulties faced by an Ombudsman, was "The Ombudsman dealing with a complaint by a civil servant about his employer - the Government". It is a topic that is most directly related to my responsibility as Public Service Commissioner and it involves me in a direct way with the impact of the Ombudsman. Consequently, I intend to direct my remarks to this specific area. However, in so doing, I am confident that I will touch upon many of the broader issues relating to the Ombudsman and the civil service.

Dr. Louis Marceau presented a paper at the 1975 conference on the distinction between the Ombudsman acting as intermediary between the citizen and the state vs. a complaint by the employee about his or her employment relationship with the state. He pointed out pertinent and relevant issues on the advisability and practicability of such intervention which I intend to relate to my experience.

Now, as I am aware, all provincial jurisdictions but Quebec require or make possible, the intervention of the Ombudsman on matters of government decision including decision taken as an employer. Legislatures have prescribed in our laws the responsibility of Ombudsmen to include the investigation of government employee/employer complaints. The question therefore has become one of how the Ombudsman intervenes, not if.

I'd like to move back in time for a minute and share some background that relates directly to the question of intervention into this area:

In 1971 when Dr. Karl Friedmann from the University of Calgary was conducting a survey within the Provincial Public Service of Alberta on attitudes towards the Ombudsman I had just recently been appointed Director of Employee Relations for the Alberta Government of Public Service. At that time it was my personal feeling that Ombudsman involvement in complaints between employees and the Government was inappropriate.

It seemed to me that once again, civil servants had been given rights that were not available to other employees with their employers. As you know in today's context this concern of public service employees leading in wages and benefits is under extensive media criticism albeit it relates primarily to alleged salary and pensions, or monetary, inequities with the private sector. In 1971 I was concerned that the Government had brought one more right to employees that really didn't seem necessary and appeared to me to be inequitable. Government employees had been given collective bargaining with minimal effort on their part and traditionally government had already provided many appeal mechanisms not provided by other employers. This may have been the reason why Australia deliberately excluded the employee/employer relationship from its Ombudsman's jurisdiction (at least that was the situation in its 1976 Act).

Now as far as I can ascertain the main reason for including this area in the Ombudsman's jurisdiction, if the question was ever singled out, is one which Dr. Marceau outlined in his 1975

presentation; and I will quote him. "The presence of the Ombudsman will make more impact, and the collaboration of the administration, without which it would be not only very difficult, but impossible to operate the system, will undoubtedly be better assured if civil servants are able to benefit from his presence, and are allowed to appeal to him, in order to resolve their personal difficulties". Apparently this has influenced the view of Quebec civil servants and a change in attitude of civil servants from negative to positive toward New Zealand's Ombudsman was attributed to this right to appeal employer decisions.

I did not and still do not subscribe to this rationale. I just don't think the attitudes of civil servants are that fickle. I don't think most of them even consider their rights to the Ombudsman in relation to his potential interference with their decisions. Dr. Friedmann, in the study I mentioned earlier, found Alberta civil servants to feel mostly positive toward the Ombudsman and while he did not endeavour to determine if these attitudes were related to their own right to appeal, I doubt very much if such a relationship could be established. I suspect the positive attitude might relate more to the skill with which the Ombudsman has operated than any other force. So, I've laid open my 1971 view of this jurisdictional question. Now I'd like to bring you up to date on what my experience has been and what my current thoughts are.

Today in fact, I have generally found the Ombudsman's role in employee/employer relationships to be beneficial and in some senses very practical. In Alberta, my experience has been that the Ombudsman has properly exercised his jurisdiction and has not tended to interfere with existing dispute settlement mechanisms. Consequently, I believe that in areas where there are no such mechanisms, he has reduced the pressure for such adversarial systems.

The Ombudsman in Alberta, has endeavoured to bring about change by "selling" his point of view, hence officials have had an opportunity to vent any frustrations they might have, before taking a more objective look at the problem. Deputy Ministers, including myself, have not agreed with all of his decisions but in my experience we have been able to accommodate ourselves to most of them. My main complaint is what I believe is a tendency to overlook the practical problems faced by administration in some very difficult contexts. Unless the Ombudsmen fully consider these pressures, in my opinion, they are not properly in a position to "second guess" a decision.

The Ombudsman's investigations have not been great in number in this area - something like 10% a year, I think, is the figure that was quoted to me - and they have not tended to grow. I don't think they have really affected, except in those specific instances, the overall operations of the government as an employer. Mind you, government as an employer has always been sensitive to the propensity for complaint whether dealt with by union, third party appeal mechanisms or Ombudsmen. So it is difficult to assess the Ombudsman's impact on day to day operations. So today, I guess I'd have to say that despite my earlier reservations, the role of the Ombudsman has been beneficial for us. But that view is with the reservation that the Ombudsmen use, as we have seen in Alberta, the adroitness of a statesman, the persuasiveness of an arbitrator, the strategy of a field general and the patience and tact of, I'd say the clergy, but I don't want to appear to be playing favourites.

Deputy Heads or similar senior civil servants, together with Ombudsmen must work with candor, openness and maturity on inquiries knowing that neither the Department or Agency, or the Ombudsman's office can be served through uncooperative, stalemate, forceful, or resistive actions.

In my view, Ombudsmen and Deputy Heads accomplish little by placing themselves in direct opposition, forcing a Minister to choose. Deputies and Ombudsmen are persons who know how to consider alternatives, to look for agreement and to utilize the merits of compromise.

In closing and on a lighter vein, I hope I have not appeared too positive with respect to our Ombudsman, Dr. Ivany. I noted in the discussion document forwarded in advance on this topic that the Ombudsman and the Deputy Minister must not appear to be too close. Let me assure everyone here that we'd have a lot closer relationship if Dr. Ivany would just see things my way a little more often. I guess I just have to keep trying.

Thank you.

PANEL CHAIRMAN

ART HERRIDGE

Thank you very much, Jim. Moving over to the third member of our panel we come to Glenn Thompson, the Deputy Minister of Correctional Services in the Province of Ontario. Glenn.

PANELIST

GLENN R. THOMPSON
Deputy Minister of Correctional Services
Province of Ontario

Mr. Chairman, Ombudsmen and honoured guests, it does not relate to the topic of this session, but here is a matter that shouldn't go without some attention; those of you with an investigative bent must have noticed the connection, I'm sure, between our Chairman's background in the Timber Branch and Miss LaMarsh's comments about the thickness of Mr. Maloney's report and the demolishing of a forest a year to publish that kind of document.

In our own experience in the Correctional Services Ministry in Ontario, I think that I can say as representative of the staff - administrative and otherwise - in our Ministry that after over two years of ups and downs in our experience with the Ombudsman process we can offer unqualified support for that process.

I want to direct most of my remarks to experiences within the Correctional Services Ministry. I think that may get into some specifics of certain concerns that I have and these will be seen to advantage against the backdrop of Mr. Normand's broader overview of civil service in general. With our clientele in Correctional Services being one, which in a very over-generalized way one can describe as having great feelings of inadequacy and problems with authority often expressed in strong feelings of suspiciousness, it should be no surprise that our inmates are proportionately the province's largest group of correspondents with the Ombudsman. The fact that the flow of their complaints has not declined rapidly after an initial burst of enthusiasm, reflects, I feel, a continuing need for an impartial investigative process for persons held in confinement.

Clearly, we as staff hope to extend the use of internal processes for complaint resolution and no doubt these processes can reduce somewhat the load upon the Ombudsman's Office. However, the very nature of the correctional process with its own complicated twin goals of social protection through secure containment and rehabilitation of the offender will always leave many persons with complaints, many of which can be best adjudicated by the Ombudsman's Office.

It may be of interest, I think, to reflect upon the problems encountered with the introduction of the Ombudsman concept for correctional staff, both line and administrative. In those early days, inmates provided the new office with a large number of complaints and of course were very ready to intimidate staff with threats that they would soon get theirs through investigation by this new authority. This enthusiasm for thinking of the Ombudsman's staff as a big stick over our own staff, combined with what was by necessity a relative inexperience in correctional programming on the part of the Ombudsman's staff, left the staff of both services - the Ombudsman's and our own - to sort their way through much manipulative opportunism. However, as inmates discovered an increasingly able Ombudsman's staff with a growing experience in judging matters of concern, some of this manipulation fell away. In addition, only actual experience of several months could reassure correctional staff, especially those on the line, I think, that the Ombudsman's staff would apply judicious balance in their examination of complaints.

A very considerable aid to this process of experiencing fairness over time were the visits by the Ombudsman's staff to institutions, staff training sessions and to administrative conferences. With the yearly intake of over 55,000 inmates to almost 60 institutions operated by 4,000 staff, I don't think it's surprising that those early weeks and months were somewhat hectic for both offices.

As you will have noted in the Ombudsman's annual reports, even members of correctional staff on occasion have found aid from the Ombudsman's office in resolving concerns which they had not been able to resolve internally as a result of some malfunction of the internal ministry or government grievance process.

Correctional systems have many inspectional devices operating to examine aspects of the system in areas such as health, food services and so on. These processes require constant upgrading and maintenance. However, none of these can achieve the settling effect on a situation that an independent and impartial review can achieve. The Public Service Grievance Board provides such a process for most staff complaints

and administrative complaints about line staff. But the Ombudsman's Office, I think, can offer a similar and external spotlight for inmate complaints.

Over the past few years, real progress has been made in our provincial correctional programs in safeguarding the rights of inmates, while at the same time creating mechanisms such as inmate committees which encourage assumption of some responsibility in daily planning and problem-solving within an institution (much more so, obviously, in longer stay institutions than in the short).

Much, of course, remains to be done in correctional program development. The Ombudsman has undertaken two major systems studies in the Ministry of Correctional Services here in Ontario. One of these studies moved to the Children's Services Division of the Ministry of Community and Social Services when that program was transferred in July. The other one, examining a sizeable cross-section of our correctional institutions, is now nearly complete after approximately two years of work on the part of the Ombudsman's staff. This study was initiated on the Ombudsman's own motion after a representative of the employee's union expressed public concern the disturbances he felt were soon going to occur in several correctional institutions as a result of overcrowding and other factors. This study process, I feel, is worthy of careful consideration by the Ombudsmen and those others of us here who are concerned with the question of whether or not Ombudsmen should be empowered on their own motion to undertake studies of complete systems of government functions.

Perhaps most people expected the Ombudsman process to be one of independent investigation of individual complaints. Annual and special reports to the legislature could and do collect those complaints to highlight areas where extensive and repeated aggrievance is occurring. When the Ombudsman aggregates those complaints and initiates independent systems studies, a rather different process is set in motion, one in which the legislature may feel it should play some part in initiating through debate of the issues raised by the complaints received by the Ombudsman and the M.P.P.'s themselves. The Ombudsman has made quite clear in the case of the Correctional Institutions Report that the study process makes no attempt to imitate the more extensive nature of a Royal Commission Enquiry. Yet I foresee that the public and the media may perceive such lengthy studies as similarly comprehensive.

I hope that the development of the blueprint for the Ombudsman's office will recognize this dilemma in some way.

If the Ombudsman's Office is to carry out such major studies with regularity on various government ministries, the matter of sufficient resources and staff expertise will be a major consideration. How, indeed, can one budget ahead for such studies? The Ombudsman would have to return to the Legislature for additional funding each time a new area for study presented itself.

I foresee a continued benefit, both to Corrections and to its critics in having such impartial evaluations undertaken by the Ombudsman. However, there may be a mechanism possible which would allow a joint decision with M.P.P.'s in such matters in order that relative priorities for different studies can be reviewed in the light of always-limited resources.

Indeed such a process of consideration by the members of the Legislature would enhance their indepth understanding of developing problem areas and allow for recommendations to be made for the more extensive Royal Commission process where necessary.

In ending these few remarks, I would say that all of us in Corrections look forward with much interest to the Ombudsman's Blueprint for future action in this province, and I'm sure that that kind of interest and study will be expressed in Niels Ortved's comments that follow since he's been very much a part of that examination since it began.

Thank you.

PANEL CHAIRMAN

ART HERRIDGE

Thank you very much, Glenn. Inasmuch as the members of the panel were chosen by the Ombudsman I don't expect that there's any particular explanation required for the fact that there are three senior civil servants and one representative of the Ombudsman's Office. Whether three civil servants and one Ombudsman's representative constitutes equal odds or not, I'm not about to say. However, the final panelist is Niels Ortved who is a special consultant to the Office of the Ombudsman in the Province of Ontario. Niels.

PANELIST

W. NIELS ORTVED
Special Consultant to the
Ombudsman of Ontario

Thank you. Just by way of introduction I should say that notwithstanding the fact that I am connected albeit not permanently with the Ombudsman in Ontario, I don't want you to take from that that I am a stooge up here just parroting what was written for me. The matters upon which I intend to address you won't answer all of the questions which my colleague Glenn Thompson hoped would be answered here and now but hopefully will deal with those matters of concern to him in the blueprint which will be forthcoming.

Mr. Chairman, members of the panel, delegates and guests.

By way of background to any discussion of the relationship between the Ombudsman and the Civil Service, it is important to bear in mind at all times the rationale behind the creation of an Ombudsman's office; namely, an Ombudsman's office is created as a result of the recognition on the part of Government that in carrying out the day-to-day business of government, because of the size of the administration and because that administration is comprised of humans, mistakes and misjudgments must necessarily occur. Given that these mistakes do occur, the question of the relationship between the Ombudsman's office and the civil service resolves itself largely into a question of the delineation of an atmosphere most conducive to achieving a resolution of those matters made the subject of a complaint to the Ombudsman, some of which will involve errors and omissions on the part of the administration, as smoothly and as expeditiously as possible. In this regard, I do not mean to talk about the feelings of suspicion or distrust on the part of the civil service which may initially accompany the introduction of an Ombudsman plan, but which almost invariably dissipate after a period of time when it is clear that the Ombudsman is not functioning as a prosecutor of the civil service; hopefully, we are now beyond that point in Ontario and in the other provinces in Canada. Rather, I am directing my remarks to the performance of the office over the long term with reference to:

- (1) conceptually, how should the Ombudsman and the civil service regard one another; and,
- (2) practically, how should the Ombudsman and the civil service go about resolving complaints?

Dealing with the conceptual aspect to begin with, and looking first as to how the Ombudsman's office should regard the civil service, it is my suggestion that without exception every single Ombudsman's office in Canada already subscribes to the view that we are better served by our respective provincial, and where applicable, municipal government administrations than most Canadians are prepared to admit or at least do admit. Every single Ombudsman's annual report bears testimony to the integrity and professionalism one encounters at every level of our civil service strata, and all of us connected with Ombudsman's offices, I am sure, have been struck by the calibre of those persons who have made genuine sacrifices to serve in the public administration. In consequence of the visits that I was fortunate enough to make with Arthur Maloney to countries other than Canada, I am able to assure you that this is not a tradition that is to be found in every other jurisdiction, and as Canadians we may consider ourselves fortunate in this regard. All of which is by way of preface to my suggestion that insofar as Ombudsman's offices are concerned, complaints about mistakes on the part of the civil service should, and I submit are, for the most part, viewed as exactly that - that is to say, mistakes, which can occur in any large organization manned by individuals - but devoid of any prejudice, malice, favour or forethought.

Still dealing with the conceptual aspect of this relationship, I would next like to turn to a consideration of the Ombudsman's office from the point of view of the civil service. How should it be regarded?

De quel point de vue le fonctionnaire doit-il envisager l'office de l'Ombudsman? Il est essentiel que l'office de l'Ombudsman et la fonction publique soient impartiaux et apolitiques. Le personnel de ces organismes se voue aux service public tout en s'en tenant aux politiques et programmes introduits par le corps législatif. Le bureau de l'Ombudsman et la fonction publique agissent sans aucun intérêt politique. Je voudrais vous rappeler pour un instant mes commentaires au sujet des erreurs qui inévitablement se glissent dans le travail quotidien de la fonction publique. Il est important de comprendre que le but de l'Ombudsman en signalant ces erreurs est de prévenir d'autres. La fonction publique apprécie ses efforts et ne doit jamais regarder l'Ombudsman comme un ennemi qui est déterminé à saper son autorité.

(It is fundamental that both the Ombudsman's office and the civil service are apolitical and impartial in nature. Each is staffed by those dedicated to the service of the public within the confines of the established policies and programmes of the Legislature, and neither has any ulterior political axe to grind. Bearing in mind my earlier comments about mistakes necessarily occurring from time to time, it is suggested that those occasions on which the Ombudsman's ex post facto review enables such mistakes to be brought to the attention of the civil service should be

viewed as simply the operation of another institutional check to guard against error and as such very sincerely welcomed by the civil service and is no way viewed as a threat to its authority.)

In addition, there will be a small minority of cases where the Ombudsman's finding is not so much that there has been a mistake on the part of the Civil Service, but there is a difference of opinion about the result arrived at. In these instances, when one considers the frequency with which two persons, both acting in good faith, can come to conflicting conclusions based on precisely the same data, neither of which is necessarily absolutely right nor absolutely wrong, this should come as no surprise. And again, when one bears in mind that this "second independent look" is what the Ombudsman legislation is all about, these findings should similarly not be regarded in any sense as a challenge or a capricious second-guessing of an administrator's decision, nor should the Civil Servant or the Deputy Minister in particular feel that there has been any lack of confidence expressed in him in the event a Minister of the Crown opts for the Ombudsman's view as opposed to that of the civil service. In the area of human relations, no single person has a monopoly on the knowledge of what is right and what is wrong.

Mind you, quite obviously, the efficacy of the foregoing rationalization relies in large part upon the corresponding obligation incumbent upon the responsible Minister of the Crown to keep an open mind in a situation where the administration of his ministry, most probably embodied in the person of his Deputy Minister, is at odds with the Ombudsman on a particular issue. In other words, it implies that any "knee-jerk" response on the part of a Minister to support his administration on every occasion that it finds itself in conflict with the recommendations of the Ombudsman would be illogical and incompatible with the balance that ought to exist between the Civil Service and the Ombudsman; and I emphasize illogical because taken to its extreme such a reaction is to imply that the actions and decisions of the Civil Service are infallible, and, as already indicated, it was precisely because of the recognition that this is not the case that an Ombudsman was created. All of the foregoing requires that the Minister of the Crown maintain a position of neutrality in any matter made the subject of a report by the Ombudsman, viewing the Ombudsman's office as coming from similarly impartial and expert sources, and the Minister must refrain from any tendency to favour the position adopted by the administration serving his ministry simply because it is his ministry. Indeed, it is no exaggeration to say that on this foundation rests the truly effective functioning of any Ombudsman's office.

Lastly, I would like to make one comment as to how, practically, the Ombudsman and the civil service might facilitate the resolution of complaints. It is obvious that their sheer

numbers, not to mention the complexity of many of the complaints received by the Ombudsman's office, preclude the Ombudsman himself from personally negotiating a resolution of each and every complaint with his counterpart in the civil service. At the same time, the relationship which was just discussed in general terms above presupposes a trust on the part of each organization that the other has performed its homework carefully and competently, and this is particularly so in the case of the Ombudsman's office because, after all, it is the newcomer on the scene. Specifically along these lines it is suggested that such an attitude may be fostered by specialization in the Ombudsman's office wherever possible; that is to say, an arrangement whereby specific personnel are assigned to dealing with a specific category of complaints for a specific period of time. And at the same time, in the ministries and agencies of Government, it is suggested that there should be one or more individuals assigned to the task of serving as a liaison with the Ombudsman's office in order to assist in the processing of complaints with that department. Such an arrangement should help to ensure that insofar as the Ombudsman's office is concerned, investigations are at all times characterized by the sort of knowledge and expertise in which those in the civil service can come to have confidence, and at the same time assist in the growth of a relationship founded on mutual trust and respect on the part of each for the opinions of the other.

Thank you.

PANEL CHAIRMAN

ART HERRIDGE

Thank you very much, Niels. These, ladies and gentlemen, are the prepared papers by the members of your panel. If I might I'll just touch on two or three points that were raised and then we will move on to discussion from the floor, questions you may wish to direct to members of the panel or views that you yourself may wish to express which might be perhaps not in conflict, but perhaps at odds with or in a shade of opinion different from those expressed by the panelists.

It seemed to me that as I listened to the papers there were some common denominators. Throughout the papers it was being suggested that fundamental to an effective, efficient relationship between the Office of the Ombudsman and the civil service are such words as openness, trust, candour and this type of thing. I'm sure that doesn't come as any particular surprise.

Secondly, I think it was being suggested that the operations of the Office of the Ombudsman should be such as not to bring

about a feeling or climate of fear or threat or distrust on the part of the staff or civil service. In this connection, it was suggested in two or three papers that fundamental to the relationship between the Office of the Ombudsman and the civil service at large is the particular and working relationship as between the Ombudsman himself or herself, and the deputy minister or senior person in the agency concerned. I think it is perhaps axiomatic that the relationship climate that is set by the senior civil servant in agencies or ministries or departments of government sets the climate within the whole agency. And if there is a positive, effective, constructive relationship at the top, this will ultimately be reflected in most of the civil servants within that particular agency. The point was made that much of the *raison d'être*, if you will, for the Office of the Ombudsman derives from the fact that administrative decisions made by civil servants, decisions that have impact on individuals, are being made by what all of us regardless of our employment must confess to being, that is, imperfect humans. And so there is the real risk, indeed, likelihood, that some of the decisions we would make will be similarly imperfect. And it is this, as Niels had pointed out, this fact of life that gives rise to the need for putting in place a mechanism designed to reduce the number of these imperfect decisions and take corrective action when in fact they have occurred.

I don't wish to attempt to synthesize the papers of all the panelists but rather to try and lead us now into some discussion that I hope all of you will find stimulating and interesting. Well then, ladies and gentlemen, the panel is open for comment or question. Go ahead.

KENN BARKER
Assistant to the
Ombudsman of Saskatchewan

Mr. Chairman, I wonder if I could direct my remark to Mr. Dixon. Mr. Dixon, while your experience as Public Service Commissioner for Alberta seemed very positive from your paper, something which I was very glad to hear, do you still find there are heads of agencies in Alberta that feel that the Office of the Ombudsman offers a service to civil service or civil employees that are not available to employees outside the civil service, and have they expressed a concern to you about this?

PANELIST

JAMES DIXON

Well that's a difficult question for me to answer in a general way. As I indicated, my initial feeling was that that was a right given to employees that didn't exist for employees of other employers. Now I've satisfied myself that in fact it just reduced some of the pressure on adversarial systems that had grown up to deal with that kind of complaint. Now, I can personally live with that quite easily because I'm accustomed to an environment of conflict and confrontation and problems of labour relations and personnel very generally. But I would say that there are colleagues of mine who are less receptive to the idea of one employee's having that right. But I think I would say there's just as much concern among union people that the employee have a right of appeal that he doesn't have to direct through the union's office. But generally speaking I think the union as a group would like to make its decisions about what kinds of appeals to take through the process and so on. I don't know if that answers your question very directly.

KENN BARKER

It's a good answer for me and I thank you very much.

PANEL CHAIRMAN

ART HERRIDGE

Dr. Ivany.

DR. RANDALL IVANY

I would just make one comment on that regard. I think Mr. Dixon would agree that we normally would not touch any complaint until all the grievance procedures have been exhausted including that of the unions.

PANELIST

JAMES DIXON

That leaves quite an open scope though, Dr. Ivany.

PANEL CHAIRMAN

ART HERRIDGE

In Jim Dixon's paper, reference was made to the fact that in Quebec the legislation respecting the office of Ombudsman was not available to employees. Are you aware of any particular feelings this might generate or might be reflected in the views of the employees of the government? Do they feel they are denied something or do they feel better because they are no better off than employees elsewhere?

PANELIST

ROBERT NORMAND

My feeling is that the unions are so strong in Quebec that they do not need an Ombudsman to protect the employees.

PANEL CHAIRMAN

ART HERRIDGE

Well that speaks to the opinions of the unions. Is that to say that's the way the employees themselves feel?

PANELIST

ROBERT NORMAND

Generally I would say so in the civil service, yes.

KEITH HOILETT

Mr. Chairman if I might take a moment to interrupt the

proceedings just to announce the entrance of Mr. Maxwell Yalden, the newly appointed Commissioner of Official Languages, and welcome him to these proceedings. (applause)

PANEL CHAIRMAN

ART HERRIDGE

Welcome. Any other comments or questions? Would any of the Ombudsmen from other provinces care to speak about their practices with respect to complaints lodged by civil servants against their employers?

INGER HANSEN

Mr. Chairman, Inger Hansen. I would like to direct a question to Monsieur Normand and to raise a concern that his comments caused me. I'm referring to the fifth point raised by Monsieur Normand that there might be consultations between the Ombudsman and the administrator. I wonder if Monsieur Normand would elaborate by way of examples or in any other way, and I will state my bias and my concern. I think an Ombudsman could be in an awkward position where he has been consulted and has stated his views before the administrative action has been taken that might subsequently be the subject of a complaint. Thank you.

PANELIST

ROBERT NORMAND

Well the way I see it, an individual or a citizen usually goes to see the Ombudsman after a decision has been taken by a civil servant that denies him certain rights or certain privileges that he claims. Then he goes to the Ombudsman. The Ombudsman makes an enquiry. And then he's a much better fact finder than we civil servants can be sometimes and therefore it's very useful. So the Ombudsman comes up with what he thinks should be the solution to the problem. And therefore before publicizing his recommendation in his annual report or before giving publicity to what he thinks should be the solution, I think that the Ombudsman should then come to discuss the matter over with the civil

servant employed. That's what I see. The Ombudsman would not publicize his decision before consulting a civil servant, as to do so would render the situation so difficult to settle that the civil servant would also need to see the Ombudsman or another Ombudsman.

INGER HANSEN

Thank you, that satisfies completely.

PANEL CHAIRMAN

ART HERRIDGE

Perhaps if I might come back to the question - was the concern that you were addressing the point that perhaps can be taken from Robert's paper that the civil servant, before making a decision on an obviously contentious matter or situation, might choose to consult with the Ombudsman prior to the decision so that he could have the benefit of the Ombudsman's position should it ever go to a dispute?

INGER HANSEN

That was exactly my concern. Thank you, Mr. Chairman.

PANELIST

ROBERT NORMAND

I'm sorry, I didn't answer completely that concern then and I'll try to do so to the best of my knowledge. Let me try to summarize your concern. What can happen is that when a civil servant or a politician is placed in a position of having to make a decision, and he knows that this decision will be badly considered by the press or by the public at large, and this may very well happen, he might take a stand that would be favourable to him publicly but that would be contrary to the rights or to the claims of the individual, knowing all the while that he could then send the citizen implied to the Ombudsman to have his case reviewed. And then the Ombudsman would come to a contrary decision, and then he would accept the decision of the Ombudsman although it would not be a popular one publicly. And therefore what I say is that there is a tendency, not too widespread but still present among civil servants, to use the Ombudsman as an umbrella.

PANEL CHAIRMAN

ART HERRIDGE

Well this still perhaps doesn't get at the point, I don't think, that you were making Madam, about consultation. What you were suggesting, Robert, is that the civil servant would make the decision that would perhaps externally appear to be the more popular one for his own self-preservation or at least for the image, and leaving to the Ombudsman the responsibility for making the unpopular decision.

PANELIST

ROBERT NORMAND

But I never implied that I would consult with the Ombudsman before making such a decision. I already have to consult with Treasury, Public Service Commission, Department of Public Works, Department of Communication and so on. I would not certainly add the Ombudsman to the list of the persons I have to see before making a decision.

PANEL CHAIRMAN

ART HERRIDGE

But to go back to your earlier point, in the final analysis it may be the Office of the Ombudsman that makes a decision that finally stands.

BRIAN GOODMAN

Mr. Chairman, my name is Brian Goodman. I'm Director of Investigations at the Ontario Ombudsman's Office, and Mr. Maloney has asked me to indicate what course our Office pursues when we receive complaints from civil servants against the government as employer. Now recognizing that this is a very sensitive area, our Office does not impetuously or unduly interfere in employer-employee relations. The course that our Office pursues is that if the individual is represented by the Ontario Public Employees Union, that either by virtue of Act, be it The Crown Employees Collective Bargaining Act of Ontario or The Public Service Act, or by

administrative practice, the individual with a grievance would have a right to air that grievance, first within the Ministry in question and ultimately before either the Public Service Grievance Board which is a board of the Government of Ontario within the meaning of The Ombudsman Act (at least that is our view), or the Ontario Public Service Grievance Settlement Board. Again we take the view that that is also a board of the Government of Ontario. Now once those grievance procedures have been resorted to and have culminated in a decision by the government board, our investigation is then directed solely to the question as to whether that board has acted properly. In other words we don't reinvestigate the same matter that was the subject of the grievance unless the grievance does not result in a hearing before either of those boards. Now, of course we all know that under the labour laws, at least of this province, the courts have held, and the Ontario Labour Relations Board has held, that in determining whether to take a grievance through to arbitration the union is entitled to weigh the interests of this one member with the interests of the union as a whole, and is not required to take every grievance through to arbitration. So that it may be that a grievance is settled insofar as the union is concerned, before it reaches either the Grievance Board or the Grievance Settlement Board. Now under those circumstances we would then investigate the original incident. But in all those cases that have gone before either of those two boards, our investigation again would be limited to an investigation as to whether the board had adequately heard the case and whether it had adequately addressed itself to the issues involved. Thank you, Mr. Chairman.

PANEL CHAIRMAN

ART HERRIDGE

Thank you Brian. In short, then, the position is not unlike that of Alberta's in which the Office of the Ombudsman does not take on the case, if you will, until all of the in-place agencies, appeal agencies and so on have treated with the original grievance.

BRIAN GOODMAN

That's correct, Mr. Chairman, except that even after those procedures have been exhausted, we would not reinvestigate the original matter of grievance. And I don't know whether that procedure is followed by the Alberta Office. I understand that some offices will investigate

the original incident notwithstanding the decision of a board that both parties, either by collective agreement or legislation or both, have agreed to submit their differences to a hearing. We only do that where the grievance has not gone to hearing.

PANEL CHAIRMAN

ART HERRIDGE

Right, thank you. Jim, could you elaborate?

PANELIST

JAMES DIXON

The only comment that I would make is that it really creates a difficulty for an employer who is trying to resolve a grievance within an agreed-upon grievance procedure when it surfaces again in another forum. Now I don't think that in Alberta - and Alex, you can correct me if I'm wrong - I think the situation is similar to the one described in Ontario. And that is that there would be review of a board that in terms of whether it handled the case properly. But the earlier intervention in cases that haven't gone through to a third party decision does create a problem. I know it's the protection of an individual right and I can't deny that, but still that individual had a representative, his union, and that's the organization that the employer works through.

BRIAN GOODMAN

But Mr. Dixon, the point that I've been trying to make is that I think that in the concept of the Ombudsman representing the little man, the point is that I'm sure you'd agree that the interests of the union and the individual employee don't always coincide. And for that reason in fact of course our Crown Employees Collective Bargaining Act and The Ontario Labour Relations Act make provision for an individual employee's filing a complaint against his own union for having represented him in an arbitrary, unjust or discriminatory manner. So what I'm saying is that to our Office it makes sense that in those cases where the interests of the union and the individual member of that union diverge, that individual should and does, under our legislation, we feel, have the right to come to the Ombudsman. There's no

question that it does create a problem insofar as the employer is concerned and insofar as the union is concerned; the union may feel that we're usurping their authority. But our interests are in serving that one person who stands alone and to whom it appears that neither his union nor the employer are adequately taking into account his particular problem.

PANELIST

JAMES DIXON

I don't think we're in disagreement.

PANEL CHAIRMAN

ART HERRIDGE

Thank you Brian. Are there any questions or comments from the floor? Niels?

NIELS ORTVED

I have a question I'd like to put to Jim Dixon if I might. In closing, you make the following comment. "In my view Ombudsmen and deputy heads accomplish little by placing themselves in direct opposition forcing a Minister to choose. Deputies and Ombudsmen are persons who know how to consider alternatives to look for agreement and to utilize the merits of compromise." We all know from experience that there are certain matters which are incapable of compromise. I think in Art Herridge's opening comments he made reference to the fact that a Minister will almost always side with his administration and he gave reasons why that was perfectly understandable and reasonable. In my remarks, I suggested that the Minister should, perhaps, maintain more of a position of neutrality, and I'm just wondering if you had a comment to make vis-a-vis those two sides.

PANELIST

JAMES DIXON

Well, I think a senior public service manager is behaving appropriately if, early on in the investigative process there seems to be a problem arising, he starts consulting with his Minister. And I think that's when you iron out problems arising from a basic difference of opinion. Now if the Ombudsman brings up information that you didn't have access to that needs to be reviewed, you go back, you talk to the Minister again. I think you try and arrive at a decision that he feels satisfied with. You work for him, you manage his organization. Now I agree with Robert Normand that if the Minister wants to make a decision and you don't agree with it, and if you feel that strongly about it then you know you're the odd man out. I don't think it should come down to that on very many occasions because the Minister shouldn't have any surprises, in my view, as long as the manager has been handling a situation well. Now if it's a problem that surfaces immediately and there isn't time to do that sort of advance work, I suppose there could be a problem that would be more difficult to deal with.

NIELS ORTVED

Are you saying that in your view it's perhaps impossible for the Minister to maintain this open mind, this impartial stance in a situation because he will necessarily have been party to a prior judgement of the matter?

PANELIST

JAMES DIXON

No, I think he has his open mind when I brief him, and he tells me what the decision is.

NIELS ORTVED

In the course of the initial decision being taken?

PANELIST

JAMES DIXON

Well, as the investigative process proceeds. Now you

know, therefore there isn't likely to be a divergence of opinions. I think a senior civil servant is paid to carry out the policy of the government, and I think it's the responsibility of that civil servant to keep his minister briefed and to follow his instructions.

NIELS ORTVED

You see, the situation I'm trying to imagine is one where the recommendation of the Ombudsman is not based on any new information, one in which both sides are possessed of precisely the same data, but they simply come to conflicting conclusions. And I suppose what you're saying is that by that time the Minister will almost by definition have been vetted out pretty carefully on the position taken by his Ministry and will have in all likelihood have taken a position already.

PANELIST

JAMES DIXON

Yes, I think generally speaking that's true. Now I think in Alberta though, we have not run into that sort of confrontation problem. There have been different views expressed but I don't think that a specific problem has arisen.

PANEL CHAIRMAN

ART HERRIDGE

Niels - if I may interject here - using the example you cite in which no new evidence has been brought into the case being examined, but simply a difference of interpretation of the base data which brings about, if not a conflicting decision, certainly one that is substantially different from that which was made by the administration. It seems to me that as the investigation on the part of the Ombudsman's Office is proceeding, as Jim points out, the Deputy Minister is going to be kept informed if it's his style to be on top of the activities of the Office of the Ombudsman, and he will become aware, as the Ombudsman's case develops, that there is a divergence developing here. And this is where the Ombudsman, by coming to discussion with the people who were party to the original decision would in a very high percentage of the cases, I suggest, reduce

the divergence between the two opinions. Now hypothetically the situation could still exist where the Ombudsman comes in clearly with one position and the administration stands with its earlier position and then the Minister is left as the elected representative to make his own decision as to which one he'll support or another one.

PANELIST

ROBERT NORMAND

Maybe I could add a comment on that, Mr. Chairman. You must first realize that Deputy Ministers are not candidates for suicide. They may be very good candidates to become crazy, but not to commit suicide. I'll tell you how I've handled these cases and I've had some in the past. What I usually do is to get into a discussion with the Ombudsman and when I realize that he wants to take a stand which I'm against, I try to find out if he's serious about it or not. If it's not an important matter, then I will not say a definite no. I'll tell him that I'll have a second look at it. Then I'll go and see my Minister and I'll discuss the matter over with my Minister. And then I'll try to give both sides of the question to my Minister, honestly. If the Minister realizes that his Deputy does not always present him with all the aspects of a question about which he has to take a decision that he has to answer for in front of the public, he'll fire the Deputy after a while. So I have to be honest if I want to stay in office, and my Minister would know that. I would give him both sides of the question. He may even go as far, and he did in some instances, as calling the Ombudsman to get it from the horse's mouth. I'm sorry about the allusion. And then we would come to a decision. I may still disagree and if I feel this is important enough and my conscience cannot accept that, then the only solution for me is to go away. This has not yet happened. It is not that my conscience is that wide, but my Minister was reasonable. And I even cited an example in the text that I delivered earlier, where I was in disagreement with my Minister and finally the Minister opted for a solution that would go along the lines of the recommendation of the Ombudsman. We discussed the amount suggested by the Ombudsman and we lowered it. That was my part of the game. And then the case was settled.

But I do not see a situation where a Deputy would oppose to his Minister in front of the Ombudsman. It would be giving too much value to the Ombudsman to think that such a situation could happen.

AMBROSE PEDDLE

I would just like to make a very brief observation on Mr. Dixon's view that civil servants' being given access to the facilities of the Ombudsman's Office gives them a preferred position over other employees. And I think the difference, the big difference has to be noted that government employees are government employees and people who work with the paper mill are working for the paper mill. And we entertain complaints against the government where we don't entertain complaints against the paper mill. Now that might sound rather silly but I think that point has to be made.

The other point I would make with respect to our own particular civil service organization that they do not demonstrate the same degree of militancy, shall we say, as the other labour organizations which have been known to close down a plant completely in the cause of some employee who has been wrongly treated. Now I'm not suggesting that we just barge in and trespass on union areas. What we do is similar to what Dr. Ivany and indeed Mr. Maloney do, we suggest that they go through their grievance procedure, and we go further than that and even mildly insist that they do so. But we don't take a position other than that. We will have a review after the person has followed the grievance procedure, and I might add that in the few cases we've had, that's been welcomed by the union people, and indeed they have cooperated towards a further review. Thank you, Mr. Chairman.

PANEL CHAIRMAN

ART HERRIDGE

Thank you, Mr. Peddle. Yes sir.

JOHN BELL

My name is John Bell from Toronto. I'd like to address this question to both Mr. Thompson and Mr. Ortved, and, if you'll forgive me, a lengthy preface. The Ombudsman in Ontario and, I think, Ombudsmen in other jurisdictions have advocated an amendment to the legislation respecting the disclosure of reports where in the Ombudsman's discretion they are in the public interest do so so. I'd like, against the background of the Ombudsman's negotiating process, if I might, to ask a question of you two gentlemen. The ultimate sanction provided by the Ontario legislation

requires a report to be made to the head of the governmental organization, the Minister. If it doesn't work out there it goes to the Premier. If it doesn't work there it goes to the Speaker, and in Ontario it goes to the Select Committee on the Ombudsman.

It's my perception that there is a pressure on the civil service or on the head of the governmental organization during that negotiating process as to effect a result. Because if you don't effect a result, it's ultimately going to be discussed in the public forum through the Select Committee or through the Legislature. I'd like Mr. Thompson and Mr. Ortved, if they would, to comment on what effect, if any, on the negotiating process there would be were there an amendment to the Ontario legislation affording the Ombudsman the opportunity of disclosing any report if he perceived it to be in the public interest to do so. Mr. Thompson, I'm very tempted to ask you to refer to specifics, but I won't. I think it should be kept in the area of the general.

PANELIST

GLENN THOMPSON

I would think John, that I would as a bureaucrat support the view that The Ombudsman Act ought to be altered to permit disclosure as the Ombudsman's Office sees fit. I certainly would not view all reports that are done in Correctional Services area - either specific complaint reports or general systems reports - as needing to be revealed in total. But I think the systems report is probably one that is more demanding of release than the report on individual personnel or individual inmate cases. Over lunch Dr. Ivany was suggesting that one component of the Ombudsman's job to be a reformer, and it's difficult to be a reformer I think if one can't look at a system and then offer comment in support of reform. And it's my view that sort of report therefore, falls into a different category. And as I mentioned in my earlier remarks, I think it probably needs to fall into a different category in terms of how it can be instrumented in the first place, and therefore its release would be perhaps more obviously done and less subject to the kind of restraints that are in the Act now. Maybe the Act should permit the Ombudsman the opportunity to release reports of both types but with different provisions relating to the individual complainant's case as opposed to a systems study report.

PANEL CHAIRMAN

ART HERRIDGE

Niels?

NIELS ORTVED

My short answer to your question would be a very definite yes. I think that my own view is that Ombudsmen should have the power to release reports but then I think the legislation would have to qualify that "in the public interest" or "as he sees fit", or in some other manner. But just by way of explanation let me say this. It's often said that the Ombudsman is powerless other than having the power to make recommendations. It would be my thesis that it's this very "powerlessness" that gives the Ombudsman his true effectiveness. Because the Ombudsman is not in a position to compel compliance with his opinions, he is able, I think, to elicit a higher degree of cooperation with those with whom he comes into contact in the course of his investigations than might otherwise be the case. His power of recommendation, in conjunction with a strong press, is one which, if the recommendation is a sympathetic one, is very difficult for a government to resist. The problem with the legislation as I see it at the present time with the power of releasing reports being limited to those which go to the Assembly as part of the ultimate sanction, if you will, or alternatively by way of annual report, is that going in the first instance going to the Assembly or to the annual report may sometimes be a rather heavy-handed response in respect of certain investigations. Insofar as the annual report is concerned, that's sometimes available only so long after the fact that the report that's contained therein is rendered largely nugatory. So it seems to me that by allowing the Ombudsman the power to release reports as he sees fit would not be to give him anything very much greater than he has at the present time but just would allow him to do that which he can do now in a much more timely fashion.

ALEX WEIR

Mr. Chairman, Alex Weir, Alberta. When we're talking about the Ombudsman's right to issue reports and his negotiating techniques, I think we must also be mindful of the right-to-be-heard sections. Now in a very controversial case that Dr. Ivany referred to over lunch, a case involving the Calgary Remand and Detention Centre, we initiated

procedures there in that case that we had never used before, in the sense that the normal procedures were sort of held back, and in order to get the case before the public, we adopted new strategy, a Press Conference. Nevertheless, the report ahead of time was given to the union, it was given to the government and the individual civil servants. Now as it turned out they had this particular report of ours two weeks before the proposed date for the Press Conference when the report would be issued to the public. It would have taken just one, one person of this group to come forward and say - no you've gone far enough, I don't want you to issue this report, and that would have been the end of the Press Conference as far as we were concerned. So I think when we're talking about the Ombudsman's rights, yes the Ombudsman has a great deal of power but it's tempered in the Act with protection, the protection to those who feel they may be adversely affected. And in this same context, this right to be heard, we have some great difficulty with this section in the sense that we lean so far the other way. We give the right to people to be heard even though we feel that strictly speaking in law they wouldn't have this right to be heard. And sometimes we regret to say that when we give them the letter saying you have the right to be heard, and then we give them the sections in the Act - the rights to counsel and so on, they become absolutely terrified, wondering, "my goodness, what have I done, I'm going to be hit by lightning", and so on. So I think this is a subject that could be discussed at a later time. But just to sum up, it's not just the Ombudsman's right to sit down and issue reports, it's the matter of doing it very cautiously.

PANEL CHAIRMAN

ART HERRIDGE

Thank you. Mr. Maltby.

GEORGE MALTBY

Mr. Chairman, Maltby, Manitoba. I'm sorry I haven't any intelligent question to ask and I apologize for missing the panel discussion. But I thought I would relate to you a very interesting case with which I dealt two or three years ago, which is public. It was reported fully in my annual report two years ago.

The complainant was an employee of the Department of Labour, Province of Manitoba, a woman who held a secretarial

position. She applied for a position which had been bulletined in the usual manner - a position of Labour Inspector III. And from the list of applicants she was shortlisted and then appeared before the board. Five applicants appeared before the board. The practice of the Civil Service Commission at that time - I think it has been modified a little since as a result of this investigation - was in my opinion a wrong practice. That practice was to submit three names to the Minister of the department concerned in which the vacancy arose inviting the Minister to make the final selection. This in my opinion is wrong because The Civil Service Act charges the Commission with the responsibility of making the selection.

The successful applicant was not an employee of the provincial government which once again in my opinion was wrong because there were well-qualified applicants within the service. Nevertheless the Minister circled Mr. X who was not an employee and he was offered the position. When he received the offer, he declined it. So what happened was my complainant was number two on the list. And the Commission without further consultation with the Minister wrote to my complainant and told her she was the successful applicant. She would be promoted as of the 9th of November. Her salary would be in such and such a range, congratulations, etc.

When the Minister saw that, he vetoed it. He didn't appoint anyone else. He just vetoed it and cancelled the vacancy for the time being. The woman concerned was chagrined. On the basis of the commitment that was sent to her by the Commission, she made certain financial commitments and she went to see her Manitoba Government Employees Association representative. The union representative together with the employee had an audience with the Minister and it was rather a hostile situation. The Minister would not yield, promote the girl or approve her promotion, and so the union representative and the complainant came to see me. They supplied me with all background information.

I felt she had a justifiable grievance, and although I cannot investigate a ministerial decision, but only a recommendation made to a Minister - nevertheless there's provision in my Act for me to consult with the Minister. So I sought a consultation with the Minister, and I tried to persuade him to change his mind but he was unyielding. I asked him to show me where in The Civil Service Act the Minister had the statutory right to participate in the selection procedure at all. He couldn't show me. He merely argued that by tradition, for the last 40 years or so, it had been the practice for the Minister to be invited to

make the final selection. This really wasn't the fault of the Minister. In my opinion it was weakness on the part of the Civil Service Commission. The Minister wrote to me and told me he'd given due consideration to all the arguments I'd put forth which was about a 12 page report, but that he would not - unless instructed by higher authority - promote this woman. This is all in my annual report.

So I invoked the final step of my Act. I reported the matter to Lieutenant Governor in Council. Nothing was done. But the interesting consequence was the same position was bulletined again a couple of months or so after my investigation. And the complainant herself phoned me and said "what shall I do?" I said reapply for the same position. Fortunately there were two vacancies for the same position. She reapplied and got the job. I thought you may be interested in that rather unusual case.

PANEL CHAIRMAN

ART HERRIDGE

Thank you very much, Mr. Maltby.

PANELIST

JAMES DIXON

She should have seen her lawyer the first time.

PANEL CHAIRMAN

ART HERRIDGE

I'd like to come back to a point that was raised in Glenn Thompson's paper in which, if I understood correctly, it was said that the Office of the Ombudsman, having monitored the nature and number of the complaints in the Ministry of Correctional Services, undertook on the basis of that monitoring and analysis, a systems study of processes or administrative procedures within the Ministry. Is that correct, Glenn?

PANELIST

GLENN THOMPSON

For those reasons and for the reason that a representative of the union made significant complaints in public about the system.

PANEL CHAIRMAN

ART HERRIDGE

I'm wondering whether the opportunity taken in this particular instance by the Office of the Ombudsman doesn't impose on the civil service a situation that they may find themselves unable to accept, notwithstanding the fact that they may have invited the study in the first instance. On the other hand may have the Ombudsman's Office placed in the position of dealing with complaints by means of manipulations of the civil service process. In other words does it put the Office of the Ombudsman in the position of going beyond dealing with complaints and taking on some responsibility for removing the cause of and reducing the number of the complaints which might, in some quarters at least, be perceived as the responsibility of the employer? Brian or Niels, I don't know whether either of you would care to speak with particular respect to this Ontario situation. Maybe other jurisdictions might care to comment as well.

BRIAN GOODMAN

Well perhaps if I could address myself to it very briefly. As Mr. Thompson suggested, our investigation resulted from over 100 individual complaints from both inmates and correctional staff. Now put yourself in the position of someone who has these complaints to deal with. What we first did was to analyze the complaints and there were certain common threads running through them. For instance there was a complaint of lack of adequate medical attention. There was a complaint of lack of privacy in institutions, and not related to any particular institution. Now the Ombudsman could have investigated each of those complaints individually, there's no question about that. On the other hand, having seen the common thread running through these individual complaints, he had to ascertain how it would be most efficient to investigate these complaints and, as you say, Mr. Herridge, to reduce the number of future complaints. And certainly I think that that's something that the Ombudsman is well suited to do, being in

the position of receiving complaints in numbers large enough to allow him to analyze the common cause of those complaints - to try and prevent future complaints from coming before him. And it was on that basis as well, as Mr. Thompson has observed, - on the basis that a well known figure, a Representative of the Ontario Public Service Employees Union made a statement that without changes being made in the near future one could expect riotous situations in the institutions - that such an investigation was undertaken.

Certainly in scope it was larger than the complaints that were initially received by the Ombudsman, but the matters investigated took into consideration the very matters complained of. Our investigation was directed to determining whether in fact, as I say, there was adequate medical attention being given in the institutions, whether there was adequate privacy or whether there was lack of privacy in other such matters. I hope I've addressed myself to your question.

PANEL CHAIRMAN

ART HERRIDGE

Does the survey, or the investigations go so far as to make recommendations to the Ministry? Perhaps this is premature because, if I understand correctly, the report is not completed. But will it go so far as to recommend to the Ministry corrective steps it should take within its structure to reduce the number of complaints?

BRIAN GOODMAN

Well I think you're right that I'm really not at liberty to discuss the contents of the report at this stage; as Mr. Thompson has indicated, we've made the report available to the Ministry so that they can study it and make whatever representations they wish - those that may be adversely affected by our report. But I don't know, perhaps Mr. Thompson would like to comment on it. I don't really feel at liberty to discuss the results of the investigation or any recommendations which might emanate from the investigation.

PANEL CHAIRMAN

ART HERRIDGE

I guess the question, the simplistic question that comes to mind though is who has the greater interest in and responsibility for the number of complaints. There's a gentleman at the mike on the floor.

JUDGE BOYCHUK

Yes Mr. Chairman, Boychuk from Saskatchewan. I'd like to address myself to the topic at hand from the point of view of the function of the Ombudsman, particularly as it relates to this type of investigation. If you look at any background papers to the development of the scheme in Canada, one of the arguments posed against an Ombudsman plan was by members of the Legislature. Their arguments were that the Ombudsman was in fact an MLA and that he should proceed unfettered. The argument against that was that although an Ombudsman, being an MLA, would see in a parochial sense the problems in his area, this would not necessarily apply in the larger sense. The argument for the proponent said one of the benefits of an Ombudsman system is that because Ombudsmen receive complaints from the entire field of jurisdiction, they are able to identify particular areas of problems in administration. This is also further recognized in the Acts by allowing the Ombudsman to act on his own motion to commence an investigation. So I think that when you're discussing a report of this nature, it is fundamental to the Ombudsman system that he or she be allowed in the course of an investigation or in the course of receiving numerous complaints to enlarge the investigation to question the entire system of administration in that particular field. I think that's a fundamental aspect of the Ombudsman system. Otherwise there would be no power given to the Ombudsman to act on their own motion.

The second point I'd like to mention, and it's with some degree of interest, is that the Ombudsmen in Ontario and Alberta have declared that they will investigate complaints from employees even though they have a grievance procedure. And I would like to throw this out for their consideration. When I was Ombudsman in Saskatchewan, one of the first things I had to consider was whether or not I could investigate a complaint of any employee who had a grievance procedure available to him. I had to conclude I did not, for the simple reason that (a) they had a grievance procedure established, (b) the decision of the union, even when it was union against the individual, was not reviewable

by myself because that decision was not a matter of administration. And I throw this out for your consideration because I think these people who are walking into these areas are walking into very dangerous waters. It's not a question whether the Ombudsman has the right to decide for the little man against the union; the question is whether or not the union is an agency of the government, and the answer is definitely no, and therefore, it's not a matter of administration which is subject to their control. I realize there's a difference of opinion but I suggest caution in this area to Ombudsmen because I do not feel that because a union has denied a grievance procedure to an employee the decision is reviewable by the Ombudsman. And then to take over the job which is normally assigned to that union by the Ombudsman because the employee was denied, is, as I say, an area which I consider to be most dangerous, particularly in relationship to our present established collective bargaining. It's very much like the AIB; I know because I'm chairman of the AIB in Saskatchewan. It's like bringing a third party to the table. You have the employer bargaining, you have the employee, then you have a fellow like myself in Saskatchewan who comes in and says no, your bargaining is no good, I'm going to tell you what you can have. So it's like a third party at a bargaining table. Thank you for the opportunity to speak, Mr. Chairman.

PANEL CHAIRMAN

ART HERRIDGE

Thank you Mr. Boychuk. Perhaps someone from either Alberta or Ontario might care to speak by way of comment on the second point made by the representative from Saskatchewan. On the first point in the defense, if you will, of the right of the Ombudsman to carry out investigations as to the institutional causes that may be giving rise to complaints, I wasn't necessarily suggesting that there was anything inherently wrong with it. But it perhaps leaves the impression that the institution itself is not going to be sensitive to the number of complaints that are going to be coming forward. Inasmuch as the numbers of complaints, and their nature, and the Ministry involved will all be revealed in an annual report, there is going to be some built-in compulsion on the part of the administration to examine the reasons why there are so many complaints coming from a particular area.

ALEX WEIR

Mr. Chairman, it could very well be there's some confusion in the mind of the learned gentleman who spoke inasmuch as at time he uses Ombudsman -

PANEL CHAIRMAN

ART HERRIDGE

I'm assuming you mean Mr. Boychuk?

ALEX WEIR

I'm thinking of Judge Boychuk in his capacity as a judge and formerly as an Ombudsman and before that as a judge. It seems to me, with the greatest respect to him, that there are some things that judges do, there are some things that unions do, and again some things that Ombudsmen do, and I don't know of any Ombudsman yet who has taken on a union in Canada. We have no jurisdiction, we have no jurisdiction over the courts, but it doesn't mean for instance that after the courts look at a matter, if it involves administration after it's over, the Ombudsman may enter the field. But not to investigate the court. Only the administration, the provincial bureaucracy. I think that has to be kept in mind.

BRIAN GOODMAN

Mr. Chairman, I just wanted to make something clear - perhaps it was not understood that we do not investigate actions of unions. There is provision under, as I said, The Crown Employees Collective Bargaining Act publicly and The Ontario Labour Relations Act privately for individuals to register complaints against their union if they feel they've been unfairly represented. But in cases where a grievance procedure is not provided for by legislation but by collective agreement, there is no problem under the section of our Act which indicates that the complainant must exhaust any rights of appeal under an Act. That doesn't pose a problem. It's a question in those cases of the Ombudsman exercising his discretion which is vested in him where it is an administrative practice that may be resorted to, to refuse to investigate the matter complained of until that administrative practice has been resorted to. So that we do not investigate any actions of unions at all. But where the individual has a complaint against the

government, against his employer respecting the terms of employment, and where for instance he didn't receive a promotion or whatever or was transferred against his wishes, then until such time as the grievance procedure has been exhausted, we refuse to investigate. And again, once the grievance procedure has been exhausted, our investigation is limited solely to determining whether the board that ultimately heard the grievance acted fairly and properly.

PANEL CHAIRMAN

ART HERRIDGE

Niels?

NIELS ORTVED

I'd just like to make a brief comment with respect to the point His Honour Judge Boychuk raised about large-scale investigations and that's this. When a complaint or a group of complaints arrive in an Ombudsman's Office, the Ombudsman doesn't necessarily know ahead of time where his investigation may lead him. And if in fact in the course of the investigating that complaint or that group of complaints, his investigation takes on aspects of what may be termed an omnibus style of investigation of root causes, then it seems to me that having regard to the provisions of the legislation which established the Ombudsman's Office, particularly in Ontario and similarly in other provinces, the Ombudsman would be very much open to criticism if he were to decline to enter upon this larger scale investigation simply because it was a large scale investigation and getting into the difficulties that Glenn Thompson discussed, namely additional expenditures of money or application of personnel. Those are very real concerns. I think that maybe in the future they should be dealt with by way of application to the Legislature, perhaps through the Select Committee if it were to occur in Ontario, for additional personnel or money should it become a matter of an omnibus investigation. But I think that an Ombudsman, if he were to decline to investigate it simply because it was a large scale investigation, might very well be open to criticism.

PANEL CHAIRMAN

ART HERRIDGE

On that particular point, Niels, is there any feeling or fear on the part of the Ombudsman that the civil service per se might be in a position of using in a derogatory sense, the Office of the Ombudsman to do something that was particularly its own responsibility, in the same way as in the example that was raised earlier - the possibility that civil servants choose to consult with the Office of the Ombudsman as to which way a decision perhaps should go so as to avoid either making an unpopular decision or be put in the position of having a decision reversed.

NIELS ORTVED

Well, without appearing to attempt to decline or to duck the question, I think maybe perhaps Mr. Normand or Mr. Thompson might be in a better position to answer that than myself.

PANEL CHAIRMAN

ART HERRIDGE

Glenn?

PANELIST

GLENN THOMPSON

Well I think that one of the elements in Mr. Normand's paper is touched on here. Often times I think the root causes, if one wants to look at them - look at a whole system and examine why it isn't as perhaps it should be - will bring one back of course to decisions long since made at the Legislature's level in terms of where funding has been placed. So in that sense I suppose the civil service bureaucracy is subject to the danger of wanting to see such reports and investigations because in the long haul they may tend to enhance that bureaucracy's funding resources. That's a danger, I think, in such a process and not one that I think is avoidable.

But perhaps the processing of that - the responsibility for that kind of study through the Legislature in making it a shared decision would obviate some of that danger.

PANEL CHAIRMAN

ART HERRIDGE

That latter point is a good one. Yes.

PAUL WOOD

Paul Wood from the Province of Alberta. I feel from the remarks you've just made, Mr. Chairman, that there is still some confusion over Mr. Normand's remarks. They could conceivably be construed as you have restated them, that there may be some benefit or some gain to be derived from civil servants consulting with the Ombudsman prior to rendering a decision.

PANEL CHAIRMAN

ART HERRIDGE

Prior to the civil service rendering a decision?

PAUL WOOD

Correct. Now I think Miss Hansen has already raised the point that most, if not all, Ombudsmen would find that inappropriate because they could later find someone complaining about the eventual outcome and therefore they would be in some sense reviewing a procedure into which they had some input. I think the point Mr. Normand was trying to make was that in some circumstances, and this has happened in Alberta, a civil servant in making a decision may recognize that the person who is going to be affected by the decision may feel it's unfair or unjust and will be dissatisfied after the civil servant has made the decision. And I think the point that Mr. Normand was trying to get across was that the civil servant, when he's rendering that decision to the citizen, may inform the citizen that he has a right of appeal to the Ombudsman, so that the citizen will pursue that avenue rather than perhaps going to the media or to his MLA or some other such means. Is that correct?

PANELIST

ROBERT NORMAND

Yes, I had a second look at my paper after the remarks made by the lady here, and I think that there is some ambiguity in the paper. I did not have in mind that the civil servant should consult with the Ombudsman before taking a decision, no, but rather that the civil servant may have in his mind when he renders a decision that his decision may be popular but unjust to the individual and that therefore the individual will go to the Ombudsman and the civil servant knows then that a recommendation will be made by the Ombudsman to change his decision and the civil servant will be ready to do so knowing that the Ombudsman will bear the onus of the difficulty of the situation. And this happened in Quebec. I didn't mention it as an example in my paper. I do not recall the facts sufficiently well. But I remember that the Ombudsman was put on the spot, even in front of the Legislature in a similar case where the Minister rendered a decision that was popular but that went against the interest of the individual. Then the Ombudsman made a recommendation that the decision should be changed. And the decision had the effect that it would give rights or money to somebody who was close to the government and therefore his decision was construed as being politically tinted in favour of the party in power. That was an awful remark to make against the Ombudsman who was in office at that time. I knew him well and I'm sure that it never crossed his mind, but this is the type of situation that a civil servant or minister can use for his own profit using the Ombudsman's umbrella and putting the onus of the difficult in the end on the Ombudsman.

PANEL CHAIRMAN.

ART HERRIDGE

Are there any other final questions, comments you'd like to direct to the members of the panel? If not I think we've reached the time that was indicated as being sufficient for the subject at hand, and on your behalf, ladies and gentlemen, I would like to extend to the members of the panel your commendation and appreciation for a job well done. Thank you very much panel. (applause)

KEITH HOILETT

Ladies and gentlemen, before we wind this session up, I'd like first of all to express the collective appreciation of the conference to all participants and particularly the panelists who have contributed so invaluablely to this afternoon's program.

I gather that Dr. Ivany would like to be heard on a brief motion and if he could speak to that briefly. Dr. Ivany.

DR. RANDALL IVANY

Mr. Chairman, I just raise this tonight because I'm not at all certain what the procedures will be tomorrow for Business Session, and it may be that we will lose at least one Ombudsman and maybe more before tomorrow afternoon. I have circulated a resolution to the various Ombudsmen in the hall and I don't intend to suggest that we vote on this tonight, but simply to put it before the conference. I will read the resolution and there will be additional copies available of it, simply to put before the conference a positive statement with regard to Ombudsman-ship in Canada.

The resolution reads thus:

Whereas the Ombudsman concept continues to expand throughout the world, and whereas 1977 marks the tenth anniversary of the introduction of the concept in Canada, and whereas all citizens of Canada should have access to an Ombudsman to deal with grievances against governmental authorities, therefore be it resolved that the Canadian National Ombudsmen Conference welcome the establishment of the Office of an Ombudsman in British Columbia by the British Columbia Legislative Assembly and encourage debate and discussion within the Legislatures and Parliaments of Canada, of proposals that would extend the Ombudsman concept to all citizens of Canada for all levels of government.

This is moved by myself and seconded by Dr. Harry Smith, Ombudsman for Nova Scotia. And there goes Alberta's flag right down the drain.

KEITH HOILETT

Well, time being of the essence, I don't anticipate that there will be discussions on that, Dr. Ivany.

I would like to repeat the welcome that I earlier extended on behalf of the conference to Mr. Maxwell Yalden in his new office as Commissioner of Official Languages and, of course, wish him the very best in that new office.

This session is now adjourned.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 15, 1977

Evening Address

The Honourable William G. Davis
Premier of Ontario

It is a great pleasure for me to be with you this evening to add my welcome to those who have come here as delegates to this very important conference.

Judging from your agenda for this five-day conference, I know you have been busy but I trust you have also had an opportunity to enjoy the social events which have been included.

I am very pleased indeed that the organizers of this conference included in the program for you visits to a few of the many attractions Ontario has to offer and of which we believe we have a right to be duly proud.

The Maloney farm is not on every visitor's agenda, unfortunately, but I certainly agree with our Ombudsman that you people deserve special treatment and privileges.

I share with the organizers of this conference a great pride in the fact that delegates are here from almost every jurisdiction in the country and from several parts of the world.

For, despite some differences in approach, you all share the same fundamental purpose of working for equity, fairness and compassion through what is an imperfect political system but the best mankind has yet devised.

This is indeed a gathering of individuals who are entrusted with a very critical and important responsibility --- that of helping to ensure that the best is attained of our administrative and regulatory procedures on behalf of the people we serve.

Your task is easier than that of elected public servants in one respect; you do not have to seek re-election. That fact is both important and material to your independence, your fairness and objectivity as Ombudsmen.

It is not my purpose to distinguish this evening between elected or appointed officials and those serving government in different capacities.

I want to speak to you tonight simply as a fellow citizen who believes very strongly in the importance of the work which you do.

By establishing the Office of the Ombudsman in Ontario, all three political parties joined together in recognition of the need to maintain an overriding concern and respect in our society for the rights, freedoms and security of the individual.

We believe that the body of Civil Rights Legislation enacted by our Legislature in 1971, provided the most comprehensive program of any jurisdiction in Canada for the protection of individual rights in relation to administrative procedures in government.

By establishing the Office of the Ombudsman we sought still greater accessibility for the individual to the security of freedom under existing law in a democratic society.

The institution of the Ombudsman is a progressive one which places participating jurisdictions very firmly on a particular side of the civil liberties issue.

It is of civil liberties that I wish to speak with you tonight.....civil liberties in the context of our own Canadian situation now being openly discussed and debated at all levels of Canadian society.

I want to speak with you about the right and responsibility that every Canadian has to participate in the current and ongoing debate across this great nation.

I hardly need to remind you people that during times of stress, of political tension or economic hardship, civil liberties and freedoms can become very fragile and vulnerable. Indeed, too often in the history of mankind, they have become the victims.

That Canada should now be facing a debate that many civilized nations have faced during a similar period in their history should not be either surprising or alarming.

The British, the Americans, the French and many others have all faced similar internal disagreements --- disagreements which were resolved with widely varying levels of civility and mutual respect.

It is perhaps not that surprising that Canadians with differing views should begin now to dig in their heels in their respective positions and to do so with both determination and commitment.

That is to be expected.

It is legitimate for those seeking a new arrangement to elect a government committed to a certain view or at least committed to pursuing that view to and through a public referendum. I speak, of course, about our sister province of Quebec.

While thoughtful people in this country will argue that not all supporters of the present government in Quebec voted for separatism, some who cast votes for the government of Mr. Levesque do share his commitment to separation.

I believe we all have to recognize that to elect a government with commitments quite different from its predecessors or from neighbouring jurisdictions is very much in the tradition of dissent and parliamentary expression of the public will.

But it is similarly legitimate for those opposed to those views or commitments to seek redress through the system and to respond by seeking to defeat that government at the next electoral opportunity.

My fear is, that, between these two legitimate alternatives there lies a grey ground where methods which are both less than legitimate or simply inappropriate might be deployed in the furthering of one goal or the other.

It is, for example, not legitimate for the federal government or anyone else to use economic prejudice in any way against the legitimately elected government of the Province of Quebec in the furthering of federal pursuits.

There has been, to date, no significant evidence of this kind of manoeuvre and this is not only important but right and just.

It is similarly not legitimate for the provincial government in Quebec to seek now to limit the scope and breadth of the debate which will precede any referendum on the future of Quebec within Confederation.

Indeed, I believe that it is my right, as it is that of every thoughtful Canadian leader, to visit the province during any campaign, and indeed long before any campaign begins, to make the case for Canada. And we must make that case in terms and tones that are relevant to Canadians in Quebec.

More importantly, just as Premier Levesque must always have the freedom to speak at length, if he so desires, in the other nine provinces about inequities and injustices as he sees them, so must all other Canadians have a similar right in Quebec.

I am hopeful that any restrictions in the present White Paper on the proposed referendum that appeared to mitigate against that freedom would not be supported by the National Assembly in that province when the referendum-enabling legislation is enacted.

Speaking for Ontario, we would be more than prepared to have a representative of our government appear before the appropriate committee of the National Assembly to make our case when that proposed legislation is considered.

I would hope that other provinces adopt a similar position.

The civility and tolerance that typifies the debate between Canadians must not and cannot be limited by artificial restrictions and limitations that could serve to seriously increase tension and pressure at a time when we should be looking for legitimate valves to release some of that tension and pressure. I believe this is true regardless of our position on the substance of the matter itself.

We understand as well that the need to motivate, stimulate and encourage our economy cannot and must not be set aside as the debate on national destiny becomes more heated. To do that would be to add a serious and entirely unpredictable dimension of discord and frustration to the entire national unity debate.

In every jurisdiction in this country Canadians deserve governments, legislatures and parliaments that can deal with the economy and national unity at the same time without sacrificing either.

Those who would hide behind one or the other as a reason for an inability or refusal to deal with both do their electors and this country a great disservice.

This applies, my friends, with respect to governments and leaders of all political affiliations --- including my own.

The temptation to put politics before leadership will be great. The pressures to put parochialism before the national interest will often be even greater.

The test facing Canada, the test facing Canadians --- federalists and separatists alike --- lies in our ability to maintain a perspective of freedom and tolerance during some rather tough and demanding times.

I begin, as perhaps more people should by understanding that even the most ardent separatist is a Canadian like the rest of us. We are all, by virtue of our heritage as Canadians, free and self-respecting participants in a national debate in which every one of us has every right to legitimately and peacefully assert our views and interests.

We treasure freedom in this country.

We treasure tolerance.

I happen to love Canada in no small measure because of the freedom and tolerance this nation has been able to nurture and sustain for all her people.

To defend this country without defending that freedom and tolerance is to diminish our greatness as a people.

That tolerance, that freedom, that basic respect is not for sale. It is not negotiable. It is not a variable in the debate on the destiny of this country.

You and I and other thoughtful Canadians everywhere must make sure that that is the way things will remain.

In his essay "On Liberty", John Stuart Mill observed, back in 1859 --- some eight years before the birth of this nation --- that "No sober judge of human affairs will feel bound to be indignant, because those who force on our notice truths which we should otherwise have overlooked, overlook some of those which we see".

Those of us who are concerned about this country and its survival must begin by admitting to ourselves that the pure federalist position is not necessarily the only truth --- just as the hard-line separatist position is less than the entire truth.

The truth will be found, as is often the case, somewhere between the two positions --- at a point where Confederation can survive and where unity can mean something new and expansive within the context of a Canadian reality on the northern part of this continent.

It is a time in Canada, my friends, not only to find the courage to speak our minds and bare our hearts.

It is a time in Canada to find the courage to want to listen and to hear and to understand.

We have much to learn from each other and our opposing views.

We have much to build and to shape with what we learn.

And the time is now if we are to, as I so honestly and passionately believe we will, emerge from the current debate a stronger, more united and more committed Canada than ever before.

Thank you very much.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 16, 1977

Morning Session

"THE OMBUDSMAN AS INVESTIGATOR"

CONFERENCE IS BROUGHT TO ORDER

KATHRYN COOPER
Director of Research
Ombudsman of Ontario

Good morning, ladies and gentlemen. I'm Kathryn Cooper, the Director of Research with the Ontario Ombudsman's Office. And it's my pleasure to bring the proceedings to order on this final day of the 1977 National Ombudsman's Conference. I'm advised that there are no special announcements or anything in particular to say to you other than to get the session under way. So without further ado, I'm going to turn the session over to the Panel Chairman for this morning, His Honour Chief Judge Ernest Boychuk, Chief Judge of the Magistrate's Court for the Province of Saskatchewan.

PANEL CHAIRMAN

HIS HONOUR CHIEF JUDGE ERNEST C. BOYCHUK, Q.C.
Province of Saskatchewan

Thank you very much, Kathryn. Good morning, ladies and gentlemen, and welcome to this session entitled The Ombudsman as Investigator. Because the Ombudsman can only recommend corrective action, legislatures have seen fit to grant the office wide powers in the fields not only of investigation but in establishing their own practice and procedure. Primarily we are concerned today with the exercise of those powers which in effect leads us into the area of the Ombudsman's staff. You recall Sir Barnett mentioned in his keynote address that for any new Ombudsman the staff holds the ladder up which any new Ombudsman could climb. While undoubtedly the Ombudsman will personally conduct some investigations, once the Office is in full flight, the majority of investigations will be carried out by staff.

And before we proceed, on a personal note I would like to express my gratitude to my former colleagues for extending an invitation to me and my wife to participate in this exceptionally fine conference. My only regrets are that George McClellan and Louis Marceau were unable to attend. Because to my mind, both these gentlemen made significant contributions to the development of the Ombudsman plan in Canada. George McClellan by sheer tenacity and singularity of purpose established clearly the independence of the office not only from the legislature but in respect to the courts as well. While Dr. Marceau, even though as he was accused yesterday of maintaining somewhat of a low profile in office, his reports, concepts and ideas made a tremendous impact on the Ombudsman plan in Canada as well as

other parts of the world. No less a person than Sir Guy Powles considered Dr. Marceau one of the foremost thinkers of the Ombudsman plan in the world.

Now each panelist has been asked to discuss one or two investigative cases handled by his office, with particular attention to methods used in the investigation, comment on the problems involved and the successes obtained. Now this morning I tried to get my wife to participate in this program by having her draw numbers so I could choose the panelists in a random fashion which she did. When we got to our meeting here this morning, it was immediately vetoed by Nova Scotia and New Brunswick who said we're going in the order that's listed on the program. So I'm sorry, Grace. It looks like our little game this morning was to no avail.

I'm delighted at this time to call on Mr. Gordon Earle, the Deputy Ombudsman for the Province of Nova Scotia for his presentation.

PANELIST

GORDON S. EARLE
Deputy Ombudsman
Province of Nova Scotia

Thank you, Mr. Chairman. Ladies and gentlemen, first of all, let me say how pleased I am to be able to participate in this conference this morning. I think I truly know what it means now to be on the hot seat and I think those that have been on panels before me will understand what I'm talking about. These lights up here generate a large amount of heat. Of course, that might be also a plan to keep us to our time schedule.

We are this morning discussing The Ombudsman as Investigator. And in so doing, we are going to review a couple of actual cases that we have had in our offices. I would like to first of all read the brief summary that the Ombudsman has produced about each of the cases which I will discuss. These summaries would appear in our annual report, and after reading that, I will then give a few details which will hopefully add some insight into the role of the Ombudsman as Investigator. I think, as the Panel Chairman has already pointed out, I should make it clear that when we say the Ombudsman as Investigator, we are in fact referring to the Ombudsman and his staff, to whom he delegates the responsibility of investigating cases.

My first case is entitled Help for a Deaf Child. A girl of 11 years of age was born with a hearing handicap. She attended the interprovincial school for the deaf for 7 years,

but was removed from that school by her parents for what were considered to be very good reasons involving alleged maladministration. Since that time, the parents worked through agencies, committees and town school personnel to attempt to secure an education for their daughter, but their efforts were in vain. No school in the area operated a class for handicapped children, except the school for the deaf from which the child had been removed. The Office of the Ombudsman was asked to help. Our first concern was for that particular child who was not receiving an education, and our second concern was over the allegations concerning the administration of the school ... such things as cruelty, poor treatment of children and so forth. In this particular case, the Deputy Minister of Education for the Province of Nova Scotia was most cooperative in assisting to remedy the difficult situation. He advised me who was investigating the case, that a memorandum of agreement had been signed by the four Atlantic provinces concerning this particular institution and that special efforts were being made to organize this institution in a much better fashion.

However, it would not be until the following year that a class for deaf children was going to be established as an extension program in an area near where this child lived. So in the meantime, efforts were worked on to try to find an immediate solution to resolving this problem. Eventually we were advised that an experimental program was worked out for this child. Her progress will be closely monitored and the parents could look forward to the following academic year when this new class would be in operation.

Now this case we concluded as rectified, and I'd like to look at it in a bit more detail from the investigative procedures involved in this matter. First of all, I should point out that this particular complaint came to us by letter, as many of our complaints do. And I think it's very important that the Ombudsman or anyone representing the Ombudsman not only be able to read the written words that are contained in correspondence, but you must also be able to somehow read the message between the lines. And this particular letter had a sense of urgency about it. You could in reading this letter sense it was a desperate plea of a mother on behalf of a child whom she obviously cared and loved very much.

The letter was asking us to please investigate and that word was actually used. It was used in a way that you could tell it was a genuine concern. It was not merely an effort to utilize our office. The other thing that we noticed from this complaint was that the parents had in fact taken many steps themselves to try to resolve the problem before coming

to our office. They had in fact done something in an effort to help themselves.

So after looking at the initial message of urgency in this, we had to then try to decide upon the best method of investigation. I should point out that our office does not utilize the same method of investigation for every case that comes in. Obviously we try to suit the method of investigation according to the needs expressed in the complaint.

So the Ombudsman as an investigator must be able to analyse the complaint and must be able to choose the appropriate method of investigation. In this case the complaint was from an area about 150 miles from our office. Nonetheless, we felt that because of the nature of the problem, a visit was necessary to the complainant. We received the complaint on June 28th, and on July 2nd we were visiting with the family at their home.

Now I think it's also important to note in this particular complaint that even before deciding to visit the complainant we were fully aware of the fact that there might be a jurisdictional problem in this case. As I mentioned earlier, the case involved not primarily a provincial agency but it involved an inter-provincial agency. This meant, that as our office was a provincial Ombudsman's office, it might be questionable as to how far we could pursue that particular matter on our own. However our primary concern was not for the strict jurisdictional question. And I must emphasize this, that we in Nova Scotia are not overly concerned about jurisdiction. Now mind you we don't go off on wild tangents to the extent that we're going to discredit our office, but we are primarily concerned about an individual's need for help. Whenever possible we try to bring the influence of our office to bear in an appropriate fashion.

So we decided to visit the complainant to find out more about the problem, being well aware that after the visit, we would then have to get down to the serious business of where we would go from there.

Now the visit itself. I spent a fair amount of time at the home of the complainant speaking with the parents and meeting the child. While there I heard many allegations concerning the administrative problems at the school - alleged beating and kicking of children, poor methods concerning feeding the children, staff problems and so forth. I also obtained specific information with respect to the situation of this particular girl and the possibilities for an education in the future. I learned that there was to be a special class

set up in the area but that the parents understood that their child would not be permitted to attend this class. And their feeling was that the child was being penalized because the parents would not return the child to the residence program. The school felt that the child should be in residence. The parents felt, for the reasons that I have mentioned, that the child should not be, and therefore it appeared that the school was not going to consider allowing the child to attend this extension class which was nearer to her home.

Now another aspect of the Ombudsman as investigator is that I believe that all of us should remember the old precept that honesty is the best policy. We feel that it is very important to be honest with complainants. So during my visit, while assuring the complainant that we would try to do whatever was possible to help out in this situation, I made it very clear that there could very well be jurisdictional problems. It may well be the parents were told that we may not be able to do as much as the parents would like. I think when you start off investigating a complaint and you let people know right from the start the limitations of your power, the problems that you may run into, then they do not build up great expectations which will later be thrown back at you if you cannot succeed in accomplishing something to help them out.

So an Ombudsman as investigator must be honest with complainants. So we advised the complainant that at that point I saw possibly two alternatives open to us in this situation. One would perhaps be to enter the school directly to investigate. In such instance we would then probably have called upon the assistance of other Ombudsmen in the provinces that related to this school, and perhaps done a joint investigation so that the weight of all offices could be brought to bear on the administration, if necessary. That was one alternative. The second alternative was, since the child was a resident in our province, to contact our Department of Education and to try to work through the Deputy Minister and the officials of that department to see if something could be done to help guarantee an education for this particular child.

We chose the latter approach and we made a direct approach to the Deputy Minister of our Provincial Department of Education. This proved to be most fruitful because in a meeting with him, I sat down and learned a lot about the institution, about the changes that were taking place in the institution, the future plans to improve the institution. I was somewhat surprised to hear that concerns expressed by this parent were in fact known, had been expressed previously and for this reason changes were taking place in the set-up of the school at that very moment. So this was indeed a pleasant surprise to know that officials were in fact looking at this kind of problem.

Then with the Deputy Minister we zeroed in specifically on the problem of this particular child to see what could be done to help her in her situation. I was assured by the Deputy Minister that he would have officials of his department check out the situation to see if anything could, in fact, be done, to see that this child was enrolled in a program appropriate to her needs.

We later received word that a special program had been worked out to enable this 11 year old to enroll in a local school in a program specially tailored to her needs. I think the interesting and beautiful part about this was that the program had in fact been worked out by officials of the same institution against whom the people were complaining. They had been brought into the picture and they worked hard to try to resolve this problem themselves along with local school authorities in the area, and also along with the child's parents. The parents had been brought into the picture and had approved the course that had been set up and were very pleased with the proposed plans for their daughter.

So in essence, in this case, I might say that the Ombudsman's Office, as investigator, was in fact a catalyst to bring together all those parties who should be concerned with the problem, to bring about a solution which perhaps was there all along. Quite possibly however, because people were approaching it from their own viewpoint, they had not been able to see the answer and to resolve the problem.

Now I thank you. That was the first case. Now perhaps I should check with the panel chairman to see if I have outlived my time.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUCK

I wonder, Gordon, if we can move on at this point. If we have time later on, maybe we can come back to your second case. Would that be satisfactory? Thank you very much.
(applause)

I would now like to call on Mr. Charles Ferris, the Solicitor to the Ombudsman for the Province of New Brunswick.

PANELIST

CHARLES FERRIS
Solicitor to the
Ombudsman for New Brunswick

Thank you Mr. Chairman. Ladies and gentlemen, of the two cases I will review this morning, the first underlines the importance of onsite inspection in particular instances, as well as the necessity of delineating the powers of two or more agencies operating in the same subject matter area.

The pertinent facts of this case are as follows: The complainant grieved, with respect to the closure of the two room school in his community and the removal of his children to a school several miles away. The objection to the removal was the treacherous condition of the highway leading to the new school during the winter months. Following intervention by the Office, a four wheel drive jeep equipped with a two way radio was provided for the safe transportation of the affected children. Further, one of the two mobile classrooms which comprised the former school was left in the community so that in the event of a lengthy period of adverse weather conditions, steps could be taken to have a local resident who had previously taught the children, assume teaching duties.

In view of the fact that there were only 7 students served by the school and the fact that the school district had been subjected to a number of budgetary cutbacks, it was viewed unreasonable to recommend that the school be kept open on a full time basis. This review was conducted with three government agencies; the departments of Education and Transportation, as well as the local Board of School Trustees. It is of course a fundamental rule that an office must determine appropriate agency jurisdictions before proceeding with its review of a grievance. It may also be true to say that in one's haste to arrive at a speedy conclusion, and to turn over the caseload, one sometimes devotes insufficient attention to the details of a grievance and the delineation of jurisdiction.

For example, this may occur where a complainant states that his grievance is against a certain department or agency but where there is or may be an alternative means of redress more suitable to complaint resolution. In this particular case, the complainants had approached all the relevant agencies, albeit without fully understanding the respective powers of each. This was to be expected, in view of the fact that the Department of Education was in the process of shifting greater responsibility to local school boards at the time the grievance arose.

Our initial contact with the department which exercised ultimate financial control over the board and which was directly

responsible for the provision of vehicles for the school busing program. When the very generous response of the department failed to satisfy the complainant we took our review to the local board which was solely responsible for pupil allocation within the district.

A meeting held with the district superintendent impressed upon us the financial dilemma facing the board. A number of teachers had been laid off and the board's special education program had been sharply curtailed. The superintendent saw no way of keeping the subject school open, although he indicated he would be receptive to any suggestions we might make.

At this point, a site inspection appeared necessary. Again this may appear to have been a very elementary step. However, in our office, site inspections are not undertaken as a matter of course and usually only where there is a dispute about the nature and/or cause of a site condition. Further, the department of Transportation which, as in this case, is usually a party to grievances involving site conditions. And it carries out investigation at our request and subsequently forwards its complete original file with photographs to our office. That department's findings are then compared with information presented by the complainant and a decision is made as to whether an office interview should be carried out.

In this case the Department of Transportation readily admitted that a portion of the road in question was impassable for varying periods during the winter months. However, it also stated that the cost of remedying the situation was unwarranted as less than a dozen families were served by the road. A more detailed investigation report might have been requested from the department. However, this would have resulted in delay both in terms of investigation and possible follow-up which, with the school term approaching, was deemed unwarranted.

The view subsequently adopted by the office proved to be most valuable. A three mile portion of the highway connecting the community with the new school crossed a peat bog, which in the driest season of the year had sunk below the natural level of the bog. Water from the adjoining bog had seeped into the road creating large mud holes up to a foot and a half deep. It was obvious that in the winter months, blowing snow would drift into the unprotected road making it impassable in terms of both depth of snow and diminished visibility. Further, it was unlikely that any vehicle which veered off the main road would return unaided. It was, in the opinion of the office, the worst possible provincial highway.

Armed with such an opinion, the office was moved to make recommendations for greater concessions to the complainant and these recommendations were ultimately accepted.

As a footnote to this case discussion, it should be mentioned that the road in question was closed from December to May of the following school year and that the local school operated successfully during that period.

The second case, which by the way was referred to us by the Nova Scotia Ombudsman's Office is concerned with issues of credibility of witnesses and the necessity of reviewing seemingly collateral issues in a given grievance.

The pertinent facts of the case are as follows: The complainant had been an intern at the St. John General Hospital from June 1974 to May 31, 1975. During this period negotiations were carried out between the Interns and Residents Association of New Brunswick, the Council of Teaching Hospitals of Nova Scotia and New Brunswick, and the Province of New Brunswick with respect to the granting of retroactive pay benefits to interns. The parties reached final agreement on June 5th, 1975, the terms of which included the requirement that a written application be made by an intern before July 18th, 1975.

The complainant had left the hospital and the country before the agreement was signed. While he was aware that retroactive pay benefits would probably be forthcoming, he was not aware of the technical requirement which he would have to meet in order to be eligible. The complainant did not file an application until after July 18th and was refused the benefits.

While outlining his grievance, the complainant stated that he was promised that the cheque would be sent to him as soon as an agreement was reached, and that he had left his forwarding address at the hospital with clear instructions to send his cheque or inform him of any developments regarding the matter.

It was our opinion that if details of the promise allegedly made to the complainant could be obtained from him and agreed to by the Department of Health and the hospital concerned, the grievance might have been resolved quickly. However, when the desired statement was received from the complainant and forwarded to the hospital, it evoked a very strong denial.

Questions of credibility are not uncommon in our work. However, in the absence of supportive proof, they are often difficult to resolve. Given the particular powers of the Ombudsman, a subjective finding, relative to credibility, does not usually meet with a warm response. Nor, it is suggested, are grievances usually resolved solely on the basis of such

a finding. In this case, the office responded to the denial by requesting copies of all documentation which might be relevant to the issue. Prior to obtaining such documentation, a meeting was held with the hospital director, the accountant for the hospital, and the person who had allegedly made the promise to the complainant. As a result of this meeting, the latter official was seen to be apparently frank, clear and honest with respect to her recollection of the relevant events. A finding in favour of the complainant based on credibility alone appeared remote.

A review of relevant hospital records was subsequently undertaken, primarily with a view to resolving the credibility issue. There was nothing in the files to support either interpretation of the facts.

On the other hand, one of the documents in the file indicated that the complainant was not a member of the Interns and Residents Association. He had not mentioned this fact as he had never considered it relevant. Another document indicated that some interns who were members had received notice of the terms of the agreement from the association executive. The complainant had never received such formal notice. However, this fact was obscured because most interns were aware of the matters being negotiated and most, not including the complainant, were physically present at the hospital when the agreement was reached.

It was the opinion of the office that since the complainant had never received formal notice, he should not, in all fairness be made to comply strictly with the requirements set out in the agreement. Further, the meeting and review of documentation had established the fact that the complainant's record at the hospital was sound and that he had applied for retroactive pay as soon as the requirement to do so was made known to him. These collateral facts established a strong equitable position for the complainant's case and were mentioned, together with our findings on the failure to give notice, to the department with a recommendation that retroactive pay benefits be made to him. This recommendation was subsequently accepted by the department.

To conclude, ladies and gentlemen, it must be emphasized that techniques or methods mentioned here are not usually applied in a formal sense to a particular case. They are applied for the most part subconsciously as part of an overall approach to problem solving. I believe this approach is most noteworthy for its flexibility and even unorthodoxy! more so than for its

adherence to strict patterns or rules. Insofar as this exercise has served to underline the fact, I believe it has been a most useful one. Thank you. (applause)

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you very much, Charles. I now would like to call on Monsieur Jean-Marc Ducharme for his presentation. He is the Assistant to the Ombudsman in the province of Québec.

PANELIST

JEAN-MARC DUCHARME

Assistant du Protecteur du Citoyen
Province of Québec

Merci Monsieur le Président, Mesdames et Messieurs. Dans son premier rapport annuel, publié en 1970, Maître Louis Marceau, ex-Ombudsman du Québec, définissait ainsi le rôle et les attributions du Protecteur du Citoyen:

Un fondé de pouvoir de l'Assemblée nationale, chargé de recevoir les plaintes du public à l'égard de l'administration gouvernementale, de faire enquête à leur sujet et de faire aux besoins aux autorités concernées, sous forme de recommandation ou de rapport, les représentations qu'il juge appropriées.

A la lumière de cette définition et de l'expérience personnelle de chacun dans l'étude des dossiers, personne ne pourra nier l'importance primordiale que révèle l'étape de l'enquête proprement dite dans le cadre de l'activité d'un Ombudsman. En effet, la valeur des jugements qu'il devra nécessairement porter sur l'administration publique et des recommandations qu'il devra formuler dans l'un ou l'autre secteur de cette administration est intimement liée à la qualité de ses enquêtes. L'interdépendance de ces deux éléments apparaît d'autant plus évidente et essentielle lorsqu'on considère que l'action du Protecteur du Citoyen se fonde sur la persuasion et non sur la coercition.

Normally, when he initiates the investigation of a complaint, the Ombudsman has to proceed in two stages: an examination of the relevant files and the gathering of all pertinent facts from the complainant himself and the administration, then an exchange of views, correspondence and discussions with the proper government employees or functionaries. However, it must be noted here that, many times, the first stage is sufficient and the complaint

can be disposed of quickly because the questions of fact and of law are easily determined so to draw early factual or legal conclusions. This is the case, generally, when the complaints, prima facie, are not justified or when a situation can be easily corrected by an assistant in his dealings with authorized lower echelon government personnel without it being necessary to raise the matter up to the highest level of the department or agency.

Dans la conduite de ses enquêtes, le Protecteur du Citoyen est investi des pouvoirs et immunités des commissaires nommés en vertu de la Loi des Commissions d'Enquête. Il en va ainsi pour son adjoint et pour chacun des membres de son personnel qu'il désigne par écrit. Les pouvoirs de commissaire-enquêteur accordés au Protecteur du Citoyen sont les plus vastes dont puisse être doté un officier québécois à la matière, incluant même les privilèges de forcer un fonctionnaire à comparaître comme témoin ou à déposer des documents sous peine de mépris de cour et de sanction pénale. Jusqu'à maintenant, le Protecteur du Citoyen n'a pas eu à recourir formellement à ses pouvoirs de commissaire-enquêteur, puisqu'on lui a toujours donné accès aux renseignements et aux documents réclamés. Cette situation démontre, à mon avis, les bonnes relations et la confiance réciproque qui règnent entre les autorités administratives et l'Ombudsman québécois.

Par ailleurs, le Protecteur du Citoyen ne prétend pas que ses enquêtes soient aussi probantes que des enquêtes judiciaires. Il a de celles-ci une idée beaucoup plus modeste - celle de la simple recherche, par une personne dans une conviction suffisamment étoffée pour mériter d'être partagée. Cette approche lui apparaît justifiée par la personnalisation de l'institution. Comme il n'est pas dans la position d'un juge qui préside une cour d'enquête et qui peut s'attendre à ce qu'un demandeur lui fournisse la preuve de tous les faits pertinents, il doit établir cette preuve par ses propres moyens. Ces préoccupations doivent, de plus, dépasser le droit lorsque nécessaire pour rejoindre l'équité.

Comme je viens de l'indiquer, chaque plainte recevable entraîne la tenue d'une enquête qui se matérialise, généralement, par l'examen du dossier de l'administration publique. Si le Protecteur exige que ses assistants prennent directement connaissance du dossier, c'est pour avoir une meilleure intelligence du problème. Dans la très grande majorité des cas, le Protecteur du Citoyen se déplaça, donc, auprès du ministère ou organisme concerné dans le but de consulter le dossier pertinent. Dans certains cas, le seul examen du dossier entraîne la solution du problème. Par exemple, le problème qui touche le retard dans le paiement de bénéfices quelconques se règle généralement sur le champ. Dans d'autres cas, l'examen du dossier révélera l'existence d'un problème d'interprétation

d'une loi, d'un règlement ou d'une norme, celle d'une pratique administrative d'équité douteuse, ou l'exercice discutable d'une discrétion.

Compte tenu de l'importance du problème, le Protecteur pourra, soit par lui-même ou par l'entremise de son assistant, procéder à l'interrogatoire du fonctionnaire impliqué ou de son supérieur, ou encore demander, par écrit, des précisions additionnelles quant à la position adoptée. Dans tous les cas, les interrogatoires sont menés sans formalité de façon à créer un climat de confiance auprès des partis impliqués. L'expérience a démontré que la discussion informelle présente de multiples avantages sur l'interrogatoire serré. Elle permettra même à l'occasion au Protecteur du Citoyen de prendre connaissance de certains faits qui, autrement, n'auraient jamais été révélés.

Outre l'enquête proprement dite, le Protecteur du Citoyen procède à une délibération ou un dialogue avec l'autorité administrative concernée. Il tient à procéder à ce dialogue puisqu'il s'est toujours fait un devoir de produire des recommandations précises dans la grande majorité des cas de plaintes fondées. Cette façon de procéder est liée au rôle actif que le Protecteur du Citoyen a choisi de jouer. A partir d'une conception limitative de son rôle, le Protecteur ne pourrait jamais formuler de recommandations et se borner, par exemple, à signaler l'injustice commise en laissant à l'administration le soin de chercher les correctifs appropriés. Toute délibération deviendrait alors beaucoup moins essentielle. Comme il a décidé de jouer pleinement son pouvoir de recommandation, le Protecteur du Citoyen se fait un devoir de procéder à la délibération dans le but de bien comprendre et cerner toutes les implications du problème qui lui est soumis. Par la suite, il sera d'avantage en mesure de faire les recommandations appropriées à l'autorité compétente notamment lorsque les circonstances lui démontrent la nécessité de dépasser le droit existant pour suggérer une solution de droit nouveau ou de stricte équité.

Dans l'hypothèse, enfin, où il s'agit tout court de la mettre en cause toute une façon de procéder d'un service, ou d'examiner les corrections qui pourraient être apportées à une loi ou un règlement, le Protecteur convoque parfois une réunion de travail à laquelle peuvent participer à la fois ses assistants au courant du problème et tous les administrateurs que l'autorité administrative jugera à propos de convier. Les échanges auxquels on procède à l'occasion d'une telle réunion servent tout aussi bien à chercher comment pourraient être résolus, dans le cadre des lois existantes, les problèmes particuliers qui les ont suscités, qu'à élaborer les principes sur lesquels devraient reposer les modifications de procédure administrative ou d'ordre législatif qu'on trouvera opportun

d'envisager.

Afin d'illustrer la procédure d'enquête de l'Ombudsman du Québec, vous me permettez d'exposer brièvement comment furent examinées deux demandes particulières, quels problèmes elles soulevaient et à quelle solution concrète elles ont donné lieu.

La première mettait en cause plusieurs ministères et elle fut examinée avec le Conseil du Trésor.

L'intéressé était un vendeur d'automobiles qui reprochait au gouvernement son retard indu, et ça à plusieurs reprises, à lui payer le prix de véhicules livrés depuis longtemps. Il affirmait, à titre d'exemple, que six voitures lui avaient été payées après un délai variant de cinq à huit mois de la date de livraison. Il reprochait aussi au service de comptabilité et au contentieux de différents ministères de refuser de recommander que lui soit versée une indemnité pour compenser l'intérêt perdu.

Une enquête fut d'abord menée par un assistant auprès des différents ministères impliqués et du Conseil de Trésor. Après examen des dossiers pertinents, et interrogatoire des fonctionnaires impliqués, il fut établi que la plainte était justifiée et que se répétait une situation inacceptable qui avait déjà été dénoncée à maintes reprises antérieurement, soit les retards de l'administration gouvernementale à payer les comptes de ses fournisseurs.

Il convient de souligner que le Protecteur du Citoyen était depuis longtemps intervenu et même revenu à la charge auprès des autorités tels le Conseil du Trésor, afin de trouver une solution valable à cette situation.

Il avait même proposé que chaque ministère impliqué verse un intérêt lorsque le délai de paiement dépasse un seuil raisonnable. Cette proposition fit son chemin, mais pas au point d'entraîner une mesure législative comme l'administration gouvernementale l'envisagea à un certain moment. Néanmoins, elle fut à l'origine d'une vaste enquête tenue par le Conseil du Trésor auprès des ministères, enquête qui révéla d'intéressantes statistiques sur les délais de paiement. Ainsi, malgré certaines faiblesses encore existantes dans la procédure, on constata que le délai moyen de paiement était passé de 77 jours en mars 1975 à près de 40 en 1976. La période au cours de laquelle s'était produite cette amélioration coïncidait avec celle où le Protecteur du Citoyen était intervenu avec plus d'insistance.

Afin d'améliorer davantage la situation, le Conseil du Trésor a, par la suite, exigé que les ministères dans le cadre des plans de gestion financière réduisent à 15 jours le délai

de préparation de paiements à l'intérieur de leurs services respectifs. Le Contrôleur des finances s'est engagé, pour sa part, à traiter des documents et à émettre des chèques dans un délai maximum de 30 jours. Si ces délais ne peuvent être respectés, le Contrôleur fera en sorte qu'un chèque soit émis de façon manuelle et non pas par ordinateur. Le délai maximum devrait se limiter à 45 jours et des efforts seront faits pour le réduire davantage.

Le problème global semble donc en bonne voie de solution et il fut possible de constater une certaine émulation des fonctionnaires responsables du paiement des comptes des divers ministères dans l'accélération de la procédure.

Concernant le présent dossier, le Conseil du Trésor a convenu qu'il agréerait à la recommandation d'un ministère en particulier de verser au plaignant une certaine indemnité en compensation de ses frais réels sans toutefois qu'on puisse invoquer qu'elle constituait un versement d'intérêt.

Le plaignant, invité à soumettre certains documents pour évaluer les dommages que le retard avait pu lui causer, a préféré n'en rien faire, confiant que la nouvelle procédure de paiement éliminera, dans l'avenir, les délais déraisonnables.

Dans la seconde affaire, le ministère des Affaires sociales refusait d'assumer le coût de services hospitaliers rendus, au Québec, suite à un accident de travail survenu hors Canada. Cette plainte fut considérée non-fondée, mais pour des motifs d'équité, le requérant fut assisté.

L'enquête effectuée auprès du plaignant et l'examen de son dossier, ont révélé qu'il avait été victime en avril 1971, d'un accident de travail aux Etats-Unis, plus précisément dans l'Etat du Maine. En règlement final de sa réclamation pour cet accident, le plaignant reçut un montant forfaitaire de \$9,000 qui, de l'avis de son avocat, constituait le maximum payable dans les circonstances.

Par la suite, de retour au Québec, il dut subir des traitements en milieu hospitalier, traitements consécutifs à son accident de travail. Or, compte tenu de la Loi de l'assurance-hospitalisation du Québec, et des règlements s'y rattachant, le ministère refusait d'assumer le coût de ces services, s'élevant à environ \$8,300, auquel pouvaient s'ajouter éventuellement d'autres coûts.

Le Protecteur du Citoyen a fait valoir que dans les circonstances, le requérant a été lésé par la concurrence de deux législations, l'une du Québec, l'autre des Etats-Unis. De plus, le Protecteur du Citoyen a souligné que ce dernier n'avait pas à supporter personnellement le coût des frais

hospitaliers accidentaires.

Aussi, il a recommandé au ministère concerné de reconsidérer sa position. Vu les circonstances particulières du cas et la recommandation du Protecteur du Citoyen, le ministère accepta d'assumer la responsabilité financière du coût des services hospitaliers rendus au requérant dans la province de Québec.

Il convient de souligner que ce geste du ministère fut strictement dicté par l'équité et n'a pas pour autant créé de précédent pour l'avenir. Néanmoins, il aura permis au Protecteur du Citoyen de dénoncer une réglementation imprécise et de produire une recommandation positive à cet égard, allant même jusqu'à suggérer un projet de modification au texte original.

Même si on n'a donné qu'un exposé sommaire des faits, ces deux dossiers suffisent à démontrer l'importance que doit accorder l'Ombudsman à son rôle d'enquêteur. On aurait pu tout aussi bien décrire d'autres cas qui nous conduiraient à la même conclusion.

En terminant, permettez-moi de souligner que dans l'élaboration de ce bref exposé, je me suis inspiré d'un document préparé par mon collègue Maître Jocelyn Lavoie, document publié en 1976 aux Presses universitaires de France, sous le titre Le Protecteur du Citoyen du Québec.

Merci. (applause)

(Thank you Mr. Chairman, ladies and gentlemen. In his first annual report published in 1970, Mr. Louis Marceau, the former Québec Ombudsman, stated his views on the role and functions of the Public Protector whom he considered as:

an agent of the National Assembly whose duties are to hear complaints from the public respecting governmental administration, to carry out investigations, and, if necessary, to make such representations as he deems appropriate to the authorities concerned, in the form of recommendations or reports.

(In the light of this definition and personal experience developed in the study of the files over the years it was soon established that the initial investigation, properly speaking, is of the utmost importance in the structure of an Ombudsman's activity. In fact, the value of the judgments he has to make on the public administration and that of the recommendations he

has to put forward are undeniably dependent upon the quality and thoroughness of his investigations. The interrelation of these two elements is all the more essential and evident when one considers that the Public Protector has to convince the administration that he is right while in no way being in a position to coerce it into admitting he is.

(In the conduct of his investigations, the Public Protector is vested with the powers and immunities of a commissioner appointed under the Public Inquiry Commission Act. The same applies to his deputy and to the assistants he so designates in writing. These powers are very vast indeed for a Québec officer who thus can go as far as compelling a government employee or officer to appear as a witness and file exhibits under penalty of law for contempt of court. Up to now, it has never been necessary for the Protector to use these powers since he has always been given wide access to government files and information. I think this says much for the mutual trust and good relationships between the Québec Ombudsman and the administrative authorities.

(On the other hand, the Ombudsman's investigations are not as conclusive as would be judicial inquiries. His aim and purpose are more modest and his efforts tend to a simple search for the strength and soundness of a conviction that can be shared and acted upon. This approach seems justifiable by the personal character of the institution. The Ombudsman must dig out himself the facts and proof he needs since he is not a presiding judge receiving all the necessary and pertinent evidence submitted by a plaintiff. In some instances, we must also go beyond the law, when necessary, if the problem can be solved on an equitable basis.

(As was said earlier, the investigation of each admissible complaint generally entails the examination of the government file. If the Ombudsman requires his assistants to have first-hand knowledge of the file, it is in order to have a better understanding of the problem. In most cases, the assistants will attend the offices of the departments concerned to peruse the files and, frequently, the problem is solved then and there, for instance in a matter involving a mere delay in the payment of an allowance. In other cases, the file will reveal a problem of interpretation or application of statutes, regulations, or directives, the existence of a questionable administrative policy, or possibly, the misuse of discretionary power.

(According to the specific importance of the question under study, the Protector himself or through one of his assistants may interrogate the functionary concerned in the matter or his superior or require additional particulars in writing, to further clarify the administration's position. In all cases these proceedings are very informal so to create and maintain a com-

fortable climate all around. It has been our experience that much more can be drawn from these informal discussions than through pressing cross-examination. As a matter of fact, it happened that the Protector thus acquired information which otherwise would have remained unobtainable.

(Besides the investigations properly so called, the Protector many times argues the problem with the proper authorities so to eventually submit exact and documented recommendations in most of the complaints deemed justified. This process is necessary to implement the active role he chose to play instead of merely pointing out instances of wrongful occurrences, leaving it to the administration to find the proper remedies. On the contrary, and since he strives to make the most of his advisory power, he could not achieve this goal without exhaustive discussion in order to fully understand the ins and outs of the problem under study so to arrive at substantial and comprehensive recommendations, especially when circumstances warrant the necessity to go beyond the extant legislation and suggest solutions based on new legal concepts or equity.

(Finally, assuming the necessity to question a global administrative process or to weigh possible amendments of the laws and regulations, the Public Protector sometimes calls for a work session attended by the assistants acquainted with the problem under study and by various officers and functionaries of the department or agency concerned. This meeting of the minds greatly enhances the working out of proper solutions to specific problems under the law as it is, while allowing for the definition of principles in support of possible amendments of an administrative process or legislation.

(To further illustrate the investigative procedure of the Québec Ombudsman, I shall now briefly outline how two particular complaints were dealt with, the problems they raised and the solutions reached.

(The first complaint involved many departments and the Treasury Board.

(An automobile dealer complained of the government's procrastination in repeatedly delaying payment of vehicles bought and long since delivered. For instance, he submitted that 6 cars were paid after 5 to 8 months from the date of delivery. Moreover, the accounting and legal branches of various departments had always refused to recommend the addition of an adequate indemnity to compensate lost interest on the sums due.

(An assistant started an investigation by gathering all the facts and information from the departments in question and at the Treasury Board level. He thus examined all pertinent files

and discussed the matter with the functionaires who had treated such files. This primary inquiry soon revealed that the complaint was justified and that this unacceptable situation had been such for a number of years, in that the governmental administration procrastinated in paying the accounts of its suppliers.

(In fact, the Public Protector had many times intervened in the past and made representations to the proper authorities such as the Treasury Board, in view of finding a solution to this deplorable state of affairs.

(The proposal of an interest being added when the delay in payment is deemed excessive has been somewhat considered but never to the point of ever framing its principle in formal legislative or regulatory provisions as the governmental administration had at one time considered doing. Nevertheless, at the Public Protector's request, the Treasury Board had a vast investigation done within each of the departments. Statistical data on the delays were tabulated for a period covering more than a year, thereby revealing various administrative weaknesses, but also the fact that the mean delay had been reduced to 40 days in May 1976 from 77 days in March 1975. The period during which this improvement took place was in fact the period during which the Protector had intervened in a more insistent way.

(The Treasury Board also required all departments, within the terms of their financial programs, to bring down to 15 days at the most, the delay of processing payment documents within their respective services. For his part, the Comptroller of Finance has undertaken to process such documents and issue the relevant cheques within the maximum of 30 days. If, for various reasons, this should prove impossible, the Comptroller would see to it that a hand-written cheque be made on demand. Thus, the maximum delay should now be 45 days and efforts will be made to further shorten it.

(The global problem seems to be well on the way to being solved and it was even possible to witness a certain rivalry between functionaires responsible for the payment of government accounts, from one department to another, in applying measures to speed up the procedure.

(Inasmuch as the present complaint was concerned, the Board had agreed to ratify the recommendation of a particular department to pay an indemnity to compensate real costs incurred without, however, recognizing that it be in lieu of interest claimed.

(The complainant, informed of this, was invited to submit

documents necessary to assess the damages such delays might have caused him, but he decided to abstain, trusting that the new payment procedure would eliminate undue delays in the future.

(In the second case, the Social Affairs Department had refused to pay the hospitalization costs incurred by a complainant in Québec following a work accident outside Canada. This complaint, strictly speaking, was deemed not justified, but nevertheless, on the basis of equity, assistance was rendered.

(After an investigation involving the complainant and an examination of his file, it was found that in April 1971, the complainant had been the victim of a work accident in Maine, U.S.A. He was paid \$9,000 in final settlement of his claim for this accident. According to his lawyer, this was the maximum amount he could hope for under the circumstances.

(Subsequently, upon his return to Québec, he had to be hospitalized again for ailments related to the accident, but the Québec Hospital Insurance Act and regulations enacted thereunder, precluded the department from assuming the additional costs, approximately \$8,300.

(After due consideration, the Public Protector has suggested that the complainant was penalized by the very provisions of two conflicting laws, one in Québec, the other in the U.S. Moreover, the Public Protector expressed the view that the complainant should not now be personally liable for payment of these additional costs and asked the department to reconsider its position.

(Because of the very particular circumstances of the case the department acted upon the Protector's recommendation and agreed to take over the financial responsibility for the total hospitalization costs in Québec.

(It is important here to submit that the department's action was based solely on equity and does not constitute a precedent for the future. Nevertheless, the complaint afforded the Public Protector the opportunity to bring to light an imprecise regulatory provision and to make a positive recommendation, even to the point of suggesting a draft amendment.

(Although these two files were only broadly summarized, I suggest that they confirm the importance that the Ombudsman should attribute to his investigative role. We could have described other cases just as well, which would have led us to the same conclusion.

(In conclusion, I wish to point out that in the preparation of these notes, I drew from part of a book written by my col-

league, Mr. Jocelyn Lavoie and published in 1976 by Presses universitaires de France under the title Le Protecteur du Citoyen du Québec. Thank you.)

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you, Jean-Marc. I would now call on Mr. Eric Moody, the Assistant Director of Investigations, Ombudsman of Ontario.

PANELIST

ERIC V. MOODY
Assistant Director of Investigations
Ombudsman of Ontario

Bill 86, passed by the Government of Ontario in 1975, is described as:

an act to provide for an Ombudsman to
investigate administrative decisions
and acts of officials of the govern-
ment of Ontario and its agencies.

This very title identifies the major function of the Ombudsman as being investigative in nature. I will, therefore, address my remarks to the role and responsibilities of the Ombudsman as investigator.

In a jurisdiction the size of Ontario, it is unrealistic to expect the Ombudsman to personally conduct every investigation. The legislature, in fact, recognized this since our act permits the Ombudsman to delegate his powers of investigation. Accordingly, he must equip himself with the investigative resources necessary to inform him of all the factors touching the complaints he is to consider and report on.

It is imperative that all investigations are conducted impartially, objectively, accurately and with the highest degree of integrity.

Before going any further, let us consider the question, "What do we mean by the term 'investigate'?" I like Webster's definition which states, in part, "To observe or study by close examination and systematic inquiry."

If you agree with this terminology, a sequential question may well be, "Is the investigator for the Ombudsman the same as any other investigator?" The answer to that question is no.

In support of that statement, I will draw an analogy between the most widely recognized investigator, the policeman, and the Ombudsman.

Consider their respective purposes; the police investigator's primary responsibility is to safeguard and maintain the public peace. It is his duty to ensure that the citizen conforms to the norms of behaviour deemed appropriate by society. He will react when a law has been broken and, in such circumstances, will conduct his investigation for the purpose of bringing the offending parties before the courts to answer for their actions and, in appropriate cases, to be sanctioned for their misconduct. In the main, then, the police investigative process and purpose is adversarial in nature.

The Ombudsman's investigator has no such purpose. The intent of our investigation is not to affix blame on any particular individual or organization; it's purpose and conduct is not adversarial in nature, rather the investigative role is strictly a fact-finding endeavour. All factors relevant to the issue must be impartially reviewed and considered for it is only this type of inquiry which will enable the Ombudsman to make a fair, correct and reasonable decision on the merits of a complaint.

The intent and purpose of the investigation is, therefore, the main difference in the investigative function.

The methodology employed in the gathering and examination of facts is in many areas similar, and we can consider these during the discussion period that follows. But, now let us answer the question, "How does an Ombudsman conduct an investigation?"

Since, in our jurisdiction as in most, any complainant must be personally affected by a decision, recommendation, act or omission of a governmental organization, we must determine 1) what happened, 2) who was affected, 3) how was the complainant affected, and 4) why was the complainant so affected.

When the investigation reaches a state where all four questions can be responded to in total, it is then possible for the Ombudsman to make his decision on the merits of the complaint and respond accordingly. It may sound simplistic. Let us look at its application.

In July of 1976, a complaint was brought before the Ombudsman by two MPP's and two private citizens representing approximately 150 commercial fishermen on Lake Erie.

Their concerns were enunciated, in part, as follows:

- 1) that the Ministry of Natural Resources through a letter from the Minister of March 16, 1976, imposed unfair hardship on the members of the associations by restricting their catch of perch to a minimum size length of 8 inches. This they feel will cause grave financial hardship perhaps resulting in the loss of livelihood and personal property.
- 2) the Ministry has imposed a quota on the amount of yellow pickerel which may be harvested because of mercury contamination; the quota they feel is too low.
- 3) the letter from the Ministry of March 16, 1976, was issued after the fishermen had made substantial investments on gear for the 1976 season which, in view of the 8-inch restriction, rendered this equipment unusable. The fishermen feel that, because of the late announcement of the Ministry, they should be reimbursed financially; and lastly, the fishermen feel that there are too many fishermen using the resources of the Lake. They, therefore, recommend that the Ministry introduce a buy-back programme of vessels placed for sale on a voluntary basis, thus reducing the number of fishermen extracting a harvest from the Lake.

At the outset, I must advise that this case was unique to the Ombudsman; we don't get many of this magnitude. However, the investigative standards and the methodology applied here are constant for all investigations. The situations we encountered adapt themselves ideally for the purpose of this discussion.

Initially, then, to determine "what happened", we established that the Minister of Natural Resources had, in March, 1976, announced among other things the implementation of an 8-inch minimum length restriction on the catch of yellow pickerel in Lake Erie. In order to evaluate the validity of this action, it becomes necessary to appreciate fully the rationale behind it. To do this, interviews were conducted with senior Ministry officials most familiar with the problem and who were party to the Minister's edict. The intent of these interviews was to gain a full understanding of what they did and why, determine what studies had been done and by whom, and what reference material had been utilized. All this for the purpose of gaining a thorough

insight as to the Ministry's position in this particular circumstance. The usual format in these situations is for the investigator to verbally apprise the person being interviewed of the contentions raised, establish involvement with the issue and ask for his explanation, listen and take notes; and when the explanation has been given, ask questions on any point not fully explained or understood, then obtain copies of all correspondence that underscores the Ministry's consideration of and position on the complaint matter.

During this phase of the investigation, the appropriate conservation officers, the Fish and Wildlife Supervisor, Deputy Regional Director for the Southwestern Region of Ontario, the Supervisor of the Commercial Fish Section, and the Assistant Deputy Minister for Southern Ontario were interviewed.

From the investigator's position, considerations such as interviewing technique, notetaking, and retention of documentary evidence are most important. We can also discuss these in the question period following.

The next step was to obtain a full insight of the concerns of the complainants and what gave rise to them. Consideration was given to the time constraints, number of persons involved and the duplication of information. Inquiries determined that the Ontario Council of Commercial Fishermen was fully aware of the problem area, and those affected were members of the Council. The Manager, as well as the Vice-president, of the Council were interviewed. We now know exactly who was directly affected.

After their responses were given, independent appraisals of the scientific data from both the Ministry and the complainants were obtained by our Office from biologists at the University of Toronto. Some 13 papers, all touching on the problem of commercial fishing in Lake Erie, were reviewed as part of the investigative knowledge contact process. Now we can determine the answer to question #3, how were these people affected?

You will recall from the contentions of the complainants that there were ecological, financial and humanitarian factors to be considered. Not every person touched by the Ministry's decision will be affected in the same manner. Consideration had to be given to those personal and private situations of each person so affected. It was therefore decided to select a representative group of commercial fishermen and interview them separately and privately in their own homes. To ensure that a qualified appraisal of the impact of the Ministry's decision could be obtained, a list of 30 questions was drawn up.

Answers to these questions would enable us to make a qualified judgment as to the affect the Ministry's action had on the group as a whole without compromising either the individual's private affairs or the constraints of confidentiality placed on the Ombudsman. We were fully aware of the effect of the Ministry's action on the individual.

A complete review of all the data obtained would enable us to answer the last consideration, why were they so affected?

We now knew the history of the perch fishing industry on Lake Erie, its economic position, ecological impact of pollutants on the Lake, the fish habitat, and the future impact such conditions would have if nothing were done. This information was then presented to the Ombudsman. He weighed its accuracy and its merits, questioned his legal advisers and his investigators; then, having considered all the evidence before him, he was ready to make his report on the complaint.

Additional consultations with both Ministry officials and the complainants were undertaken to review the proposed recommendations of the Ombudsman. Both parties responded favourably. This was just a part of the continuing cooperation extended to the Ombudsman by the Ministry of Natural Resources.

On the 20th of February, 1977, the Ombudsman advised the Ministry of Natural Resources of the results of his investigation and put forth 11 recommendations that he believed would remedy the original concerns brought before him.

On the 24th of March, 1977, the Minister of Natural Resources responded, saying, in part, "I find nothing in your report that the Ministry of Natural Resources cannot accept."

The case we have just been considering, as I stated at the outset, was unique for the Ombudsman. The second case I will refer to will illustrate that, because of the Ombudsman and his mandate, some problems are easily rectified.

Consider a complainant who was billed \$1531.00 by Ontario Hydro for a job its employees performed on which the original estimate had been \$600.00. The complainant felt that such a discrepancy was unreasonable.

On-site inquiries revealed that Hydro personnel had performed their duties inefficiently.

The project involved the complainant moving a church a distance of approximately 7 miles. The Hydro personnel were involved in raising or disconnecting Hydro wires along the road to accommodate the move. It was determined that approximately three trucks and six persons were involved with one of the three units being present on a stand-by basis only.

Inquiries with the local Hydro official revealed that the employment of a stand-by truck was not standard policy but that the complainant had been billed for this extra manpower. Upon reviewing the factors our investigation had confirmed, an adjustment was made whereby the amount billed to the complainant in excess of the estimate was reduced by 50%. This proposal was considered satisfactory by the complainant, but such quick results could not have been obtained had the Ombudsman's personnel not experienced the cooperation from the government officials.

I trust that these few comments have given you an insight into the Ombudsman as an investigator.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you very much, Eric. I think you can all see the great value of exchange of ideas, particularly in the field of investigation. I recall when I was appointed Ombudsman in Saskatchewan, they gave me a three day lead time to establish an Office and get working. I'd just had an opportunity to slip down to Alberta. I'd hoped to meet with George McClelland. He was away at the time and I spent two very profitable days with Alex Weir, and they were of great assistance to me in setting up my office, not only in procedure but to give me some guidance in investigation. Mind you I just want to put in here a word of caution. Although I got a great deal of assistance from Alex Weir, it doesn't in any way impute that he and I agree on everything.

The following year I spent a great deal of time, when I was recruiting staff, talking on the phone with George McClelland, Alex Weir and George Maltby. Their experience gave me great assistance in the manner in which I was to handle my cases and particularly how to avoid some pitfalls and some very tricky investigations.

I have a case here that I wish to discuss with you which to my mind was probably an extremely important case to our Office. Although it's difficult to add up the time we spent on it, I sometimes hazard a guess of about 200 hours.

KATHRYN COOPER

Before you begin describing that case, I'd like to make one brief announcement, if you'll excuse me, Ken Cavanagh has asked me to announce at this point that the spouses of the delegates are invited to the luncheon to be held after this morning's session. Apparently this wasn't made known earlier and I'm announcing it now so that those of you who would like to do so, can advise your spouses that they're welcome to the lunch which will be held in the Dominion Ballroom North immediately adjacent to this room. Excuse me for the interruption. Please go ahead.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you, Some ten years ago the government of Saskatchewan, following medical advice, began discharging into the community a number of institutionalized patients from mental hospitals. At the same time an innovative community treatment program was developed to deal with these people, and in addition there was an attempt to keep mentally disturbed patients who were potential institutional cases in the community as well. They developed something along the line of a foster care, a special care program, supervised by the department with the department providing the necessary expertise when required.

In this setting, eight principles were formulated for guidance. The important ones outlined the need to be sensitive to the social stresses which might result from the patient's placement in the community and it was also pointed out that neither the patient nor those associated with them must be allowed to suffer unnecessarily. The direction concluded that the central office, which was the head office in Regina, was always prepared to help out and advise in any difficult situation.

Suffering from epilepsy can create a number of problems and difficulties to those who are afflicted. A lady born in Europe, raised in a rural community was confronted with this malady at a very tender age. She encountered difficulties in learning. After struggling to achieve grade four, formal education ceased at age 14. It was readily surmised she had a turbulent childhood to which was added the taunts of her peers and elders in a situation where epileptic seizures were not understood by most people. Seizures, tantrums, and violent acts against her own family culminated in admittance to a hospital in the early 1940s. Following a five month period of treatment, improvement in the patient's condition was noted and she was returned to her family. For a number of years the family somehow managed to bear with the episodes of hostility, violence and tantrums.

By the middle 1950s a further period of hospitalization occurred. It was established that if proper medication was taken, the seizures could be kept to a minimum and aside from other idiosyncracies all managed to carry on without too many difficulties although there were many trying times.

Changing times, views, and philosophy found the patient, who was not mentally ill enough to require total confinement, tended for in a parental home or lodged in approved boarding home with care, with contact given by trained psychiatric social workers. An assessment in 1968 disclosed a severe epileptic responding poorly to treatment and to anti-convulsants, unable to support herself with the prognosis of mental deterioration with age. We then find a patient admitted to a psychiatric centre in 1970, a single woman whose pattern of behaviour had not changed from that detailed above. Continued hostility, aggressiveness and displaying paranoid tendencies were noted as the reason for readmission. Her parents had now concluded that they were unable to cope with the situation any longer. An approved boarding home was located and the patient remained there until the late summer the following year. This period was not without incident. It was noted that the landlord had on one occasion found it necessary to restrain her to such an extent that she consequently had bruises on her arms. At this point a threat was made that any reoccurrence of her actions would result in a strapping. This threat indeed was carried out with a strap across the buttocks with a belt. This conduct apparently had the desired result of calming her down. When this was reported to the social worker the landlord was advised not to repeat the procedure. She remained in the home apparently getting along not too badly. The patient did complain she was being beaten by the landlady.

while a counter charge from the landlady declared the patient had been swinging at her, kicking, as well as using vulgar language.

Her parents by this time considered the only proper place for her would be a hospital. However, the worker in question indicated to the parents that the patient's behavioural pattern was no reason for institutionalization. During the course of her stay in that home, discussion arose regarding discipline. Apparently, the landlady had found that the only way to control the patient was by threatening use of a strap and occasionally providing a swat across the backside with it. This was discussed with the staff members and decided that since the disciplinary procedure was not being abused and used only when necessary, she would be permitted to remain in that particular house. Finally, she was moved to another home and following that, into a psychiatric centre.

Upon admission there was no indication either from any conversation, or her ambulation that there was anything wrong with her ankles. They were described as puffy in appearance, apparently from fluid, and her natural configuration was noted. Our Office became involved following a visit by her mother in which she indicated her daughter had entered the hospital with a broken ankle and the doctors had not given her proper medical attention. She alleged the ankle was so swollen that she could not wear foot apparel. Investigation showed x-rays had been taken and other diagnostic tests conducted to ascertain the cause of the puffiness in the ankles. The patient herself made no complaints about the ankle. Complaints about sore feet and other medical problems were attended to and properly charted, and the inference of poor medical attention was not substantiated. It was noted that at least seven passes had been issued to the patient to go shopping in the city. The walking distance was calculated at approximately one mile. The entire investigation contained strong emotional overtones on the part of the parents and considerable difficulty was encountered in trying to get a straightforward picture from the patient.

She did indicate a number of abuses encountered in her last boarding home. These allegations were sufficient to require a complete and thorough investigation to either confirm the patient's story or to absolve the actions of those involved. In all fairness it must be recorded that the people who provided her with the necessities and accommodation had absolutely no previous experience in the caring of people with either emotional or mental problems, nor did their background indicate any training which would assist them.

They were not really anxious to embark on such a venture. The home was primarily chosen because of it being in a rural farm setting and would be sufficient to keep the patient occupied.

It was reported and chronicled that the patient being strong willed and demanding caused differences of opinion more than once. She was stocky, strong, and a good worker. However, she would not listen to instruction and exhibited temper tantrums of a physical nature when confronted with obstruction or a reprimand. Verbal threats were ignored and only retaliation worked, such as a swat with a leather belt across the posterior. An illustration of one incident recorded by the worker states that upon arrival she found the whole household in upheaval. Things had exploded, resulting in a big free-for-all whereby the patient sustained a black eye and a scratch, and the landlord got two front teeth knocked out and three loosened which required extraction.

From June 1970 to fall of '73, my investigator's report details narratives of visits to the boarding home in which any situation worthy of attention was mentioned by the visiting psychiatric nurse. These excerpts took something like 15 full pages, in addition to recording 93 visits that were not described in detail.

As well as recording physical and verbal abuse by the patient to the people of the house, there were also narratives in which the man of the house told the nurse of times when he had resorted to using his belt to the posterior. This treatment obviously caused concern to the nurse and as well to the people themselves.

Efforts to obtain a clear-cut policy appeared to be unsuccessful. It finally evolved that the use of the strap was greatly frowned upon and only to be used in dire emergency situations. The continued efforts of the nurse to try to obtain a directive at the local level and still maintain the policy of keeping the person in the community rather than in an institution resulted in a decision to leave the patient where she was, as it appeared that there was no other available home that would take her. More than one experienced worker described the patient as the most difficult they ever met. Throughout all this, of course, the patient continued to have seizures.

The fracture of her ankle was a chip fracture and x-rays were of no help to the physicians for the radiologists in establishing the possible current state. A process of elimination of many varied stories - one in which involved the

patient jumping from a moving car had to be undertaken. Naturally this car incident was seemingly a most plausible cause, but from the actions of the patient afterward, it had to be eliminated along with other reported events that just did not bear sufficient substantiation in time or substance.

There were several physical bouts at the farm. The farmer readily conversed with frankness on the occasion when he had to grab hold of her ankle as she was kicking him. But there again there was no outward sign that this had broken her ankle. A visit by the nurse and social workers did not seem to indicate any incapacity.

It finally came down to this. The department had control or supervision over an epileptic, prone to explosive incidents of hostility and violence. The patient was placed in a boarding-home situation because her parents would not take her back, and she was almost a continual source of trouble in a home or in a psychiatric centre and was a concern and frustration to all who dealt with her. The psychiatric centre would not accommodate her indefinitely and she was not receptive to nor a good candidate for, a workshop situation.

In the three years, the overriding desire to maintain the patient in a community rather than in a hospital caused immense hardships to the patient, the workers, family, and the people with whom she was boarded. Throughout this entire investigation I continually asked myself the question - why would a person with an explosively violent temperament and medical condition be placed in care of untrained people? Why after several recorded instances of physical violence against her, was she permitted to remain in these homes? The remarkable aspect of this investigation is that the central office was neither informed nor ever consulted on a possible course of action.

After our intervention, a further examination by qualified medical personnel, committal was made to an institution and my office had no further complaints. At least now the patient has a review procedure available and is in a setting where expert care and attention is available.

This investigation was highlighted by several instances. It covered a period of some 33 years. We found a situation where a person was caught, as one might term as an experiment. Although there were guidelines they were broad and wavy and they weren't solid. There was difficulty in establishing what happened, particularly from the subject matter as she

was readily and easily manipulated by her mother. For example, when there were physical incidents in the hospital, she'd report to the staff what had happened, that she fell or had an outburst. When her mother arrived on the scene and suggested to her that the staff had abused or beaten her, she'd readily adopt her mother's version. There had to be a great deal of testing of validity of statements, going outside those particularly involved and into the community.

What was apparent was that my investigator's background became most important in this investigation. Having been a trained police officer and also an investigator, for the Worker's Compensation Board, he had established a rapport with the hospitals, he was familiar with hospital records, and familiar with those who dealt with these problems. Our method used was nothing more than straight hard work. It was plug, plug, plug. Check everything out every time we came across a fact try and verify, try and get some outside information. There are times when we had to make a decision as to discontinuing certain avenues which were leading us nowhere. We had to keep facts in other words we couldn't let a spillover happen because this incident happened here. It may have been rectified, we couldn't carry every incident into the entire investigation. There had to be cognizance of time and space.

And what was really probably the most interesting, from the Ombudsman's point of view, was that the decentralization of this particular operation had encouraged, what I call, a local professionalism, where faced with a problem, the civil servant involved either through ego or professional pride, albeit not able to handle the problem, albeit not able to find a solution, refused to go through superiors for assistance. It raised other interesting questions. What about patients' rights? Who is there to protect people who are mentally deficient or disturbed? Who is going to bring these things forward? Who is going to protect their rights? How do they obtain and instruct counsel? Is there a legal liability on the Crown in this situation? My Office was most disturbed when we completed this investigation and we decided that we'd pursue it further on these questions. And it was remarkable, and we instructed the most learned counsel we could find in the province to give us an opinion, and his opinion was that the Crown was not liable, even though they were responsible for placement, for care, for supervision, there was no liability on the question of violence to the patient.

I hope that these cases we have discussed this morning give you some insight of the variety and the approach taken in the Ombudsman's Office on behalf of the citizen. I thank you all very much for your kind attention. I'd be very pleased at this time now to turn this period into a question period. (applause) Mr. Maltby.

GEORGE MALTBY

Thank you, Mr. Chairman. I was interested in Mr. Moody's comments as stated on page two of his paper and I agree with him, when he asks the question: is the investigator for the Ombudsman the same as any other investigator? And the answer to that question is: no. Nevertheless, with previous experience as police investigators, Mr. and I have between us about 65 years experience of conducting investigations in one way, shape or form. That experience is invaluable in sorting out fact from fancy and relating those facts to the law related to the complaint itself.

Donald Rowat in his opening remarks said that during his talks with George McClellan, the first Ombudsman for Alberta, he favoured ex-police investigators as members of his staff. In my case, because we are a rather small staff, it has certainly been invaluable to me to have Mr. Webb. But nevertheless, I have two other investigators - there are four of us altogether who carry the backbone. The other two are not ex-policemen and they are also good diggers.

If I'll be pardoned for dwelling on the comparison between police investigator and investigator for the Ombudsman; you know a police investigator's dream is one and one - one crime reported, one crime detected - one and one, 100%. That's not the case with investigators for the Ombudsman. And I don't really care for the term that has been used here several times this week - winning cases. I always take the position that if I say have 100 complaint referred to me and providing I do a thorough, impartial investigation and if in those 100 cases I find the government department or agency acted improperly, I have done my job as an Ombudsman, as an impartial investigator. It's not a question of winning cases.

Mr. Chairman, you've referred to our act which authorizes us, within the terms of the act, to determine our own procedure. That is so. We don't have to apply the judge's rules when we're questioning people. So in some respects the Ombudsman, as an investigator, or a member of his staff, have an easier job than a policeman. We have

greater powers. Section 30 of my act states quite clearly that I may call people before me and they shall produce and they shall give information relative to the matter under investigation.

If I could just take about three minutes to illustrate a very interesting example of being on the other side, as opposed to taking the adversary role as Mr. Moody discussed, very briefly, and this was reported in my annual report.

The complainant had a half-ton truck. He drove into Winnipeg one Saturday morning about 10 a.m. He wanted some repairs done to his truck, and he had some business to attend to. He had lunch in Winnipeg.

I should explain that we have compulsory government automobile insurance in Manitoba.

He explained to the adjustor that he had two beers with his lunch, he had some further business to attend to in the middle of the afternoon. He went and picked up his truck. He had his evening meal in Winnipeg. He admitted to the adjustor that he had three beers with his evening meal. What he did after supper for an hour or two I don't know, but he did admit in his statement to the adjustor, that somewhere around 11 p.m. he went into a beer parlour and he had three or four beers in the beer parlour. In total he admitted to the adjustor that he'd had seven beers during the day, but it was over a period of twelve hours, two meals in between so he was burning up some of the alcohol.

He lives about 20 miles outside of Winnipeg. Shortly after midnight he got into his half-ton truck and he started on his journey home. He falls asleep at the wheel, hits a concrete abutment and injures himself and does a thousand dollars damage to the truck. The RCMP attend the scene. Because of the injuries to head and face, he cannot take the breathalyzer test. All an RCMP officer could say was the driver's breath smelled strongly of drink. That could apply to anyone who had had two beers.

He was taken to St. Boniface Hospital. En route he said he would take a blood test. By the time he got to the hospital he changed his mind. He says no, I don't want a blood test. And as most of you present here know that if a person is charged in court with an offense of this nature, the fact that he refuses a blood test cannot be commented upon in court. The end result was his claim for about one thousand damage to his truck was refused by the Manitoba Public Insurance Corporation.

He wrote to me and he complained. He said he was not impaired, he was tired. He fell asleep at the wheel. Very interesting. We got a complete copy of the file and there was one note on the file by the legal counsel on of the insurance corporation which said - we require more information as to the degree of impairment of this person before we decline his claim. The only further investigation that was done by the adjustor was to go to the hospital and see the doctor who had treated him for head injuries. The doctor was unable to give an opinion as to whether or not the man was impaired, and that was about all that was done. So what evidence did we have? We had the man's own statement which was made the following day that he'd had seven beers over a period of twelve hours with two meals in between. He admitted that, he may have had ten. You know if a man admits seven, he's probably had ten. But suspecting a person of being impaired and proving it is another matter.

He insisted that he was just tired, that he'd fallen asleep at the wheel. He'd hurt no one but himself. My initial reaction - and I throw this out - always be guarded against first impressions because my first impression was this man was drunk and he's not going to get any help from me. But as I dug and dug and dug, I found no evidence that this man was impaired to the extent that he was incapable of exercising proper control of a motor vehicle.

After we'd finished our investigation, I drew attention to legal counsel's note that we should get further evidence, if we can get it, as to the degree of impairment of this man. There was no further evidence. The only evidence we had was his own statement, seven beers. The RCMP officer said his breath smelled of drink. I made a recommendation to the Director of Claims, with a copy to legal counsel for the corporation, that this man's claim be honoured because obviously if he had been impaired the claim could have been quite legally denied. He was not charged with driving whilst impaired, he was not even charged with careless driving. I made a recommendation that the claim be honoured, and I got a letter back from the insurance corporation thanking me for my investigation and the claim would be settled.

I just thought that would be an interesting case to people like Mr. Moody on the panel and Ernie and others of how, as an ex-policeman, you take an entirely different approach. Thank you, Mr. Chairman.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you, Mr. Maltby. Dr. Frank.

DR. BERNARD FRANK

I would like to share with you a question that was raised with me and which relates to the paper presented by Eric Moody. A member of a staff of one of the Ombudsman offices and I'm not sure that he's here - I have no authority to use his name - criticised the use of the word investigator and investigate. We have that, of course, in all of the definitions. We have it in our statutes, even some of the offices use the name Correctional Investigator, or in Zambia, investigator general. And so it's one of those questions that is going to bother me. I don't know that - I'm certainly not attempting to answer it but let's look at it a little more. There are words that have traditional meanings, and once you use that word, the public, the press, the courts, attribute to that word the meaning that they're familiar with. And the word investigator, as Mr. Moody has pointed out, might be applied to the police investigative process and might be applied to the Ombudsman investigative process, and so the real question is how does the public, how does the press perceive that word investigator, investigate - and is it a word that should be avoided? Will it be necessary to change our statutes, our definitions and say determine facts and have some title for those who determine facts. Or those of you I know are familiar with TV and you're aware of the Moranda warning in the United States giving accused rights. Maybe it may be necessary to have the Moody warning and print up on a card the definition between the police investigative process and an Ombudsman investigative process and start reading it in every investigation.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you, that's an interesting point, Dr. Frank. Mr. Moody maybe you would like to tackle that problem.

PANELIST

ERIC MOODY

That's why I referred in my remarks to the definition that Webster's Dictionary gives us. And let me repeat it. It's the term, or the word investigate - "to observe or study by close examination and systematic inquiry". I think that's precisely what we do, not only with Ombudsman's investigations but with police investigations as well. And I don't know how better you're going to describe that act that we perform now and we have in the past. We do enquire, and we do enquire systematically. And we study by close examination. So when I refer to an investigator, I think I'm correct in assuming and intending to mean that we do just precisely what the definition illustrates for us.

I would like to reply to Mr. Maltby just briefly, and assure him that in my remarks I meant no divisive description of a police operation because --

GEORGE MALTBY

I didn't take it that way.

ERIC MOODY

Very good. I did want to just illustrate the difference in the purpose of our enquiries and being somewhat prejudiced towards former police officers myself, I think the methodology that we use is very very similar and it can't be duplicated. The experience that people have in the police field as applied to an Ombudsman's operation just can't be duplicated, and I think it's very very necessary.

PANELIST

CHARLES FERRIS

Mr. Chairman, I'd just like to make one small comment on that point, and that is that in our office, and I think perhaps it's partly because of the size of our operation that the investigative function carries with it to a degree the recommendation function as well and this may, at the first

level at least, and this may very well be the case in the other offices as well, but to the point where an impasse is reached, I think that both Madame St. Pierre and myself normally carry out investigation through to the recommendation level before we would formally ask the Ombudsman to intervene. And I just should add as well that there is a constant consultative process that's going on between the three of us and so it's not a clear-cut sort of thing. But I think the term is a broader one in the context of our Office, and in the particular size of our operation.

PANELIST

GORDON EARLE

I should like to add that for the province of Nova Scotia, we don't find any particular problem in the usage of terminology because we tend to see the function as being essentially the same regardless of what name is applied. Even our clientele when they call us, they use various terms. We'd like to speak to one of your counsellors, we'd like to speak to your investigator, could we speak to an officer, could we speak to someone in charge. But in essence what they really want to do is talk to someone who can look into their concern. So we could, I suppose, go into a lot of quotes, a rose by any other name, or by their work ye shall know them, or whatever. But basically I think we should not become overly hung up with technical definitions of various words that relate to our function. I think that the best thing is to try to get on and do the job in the best way possible. And that's my own feeling on the matter.

PANELIST

JEAN-MARC DUCHARME

Pour ma part, le nom ou la façon de qualifier la personne qui a des contacts avec l'administration n'est pas ce qui importe. Si on veut l'appeler enquêteur, je ne vois pas d'objection, pourvu que cette personne puisse bien expliquer son mandat lorsqu'elle sera auprès des fonctionnaires. Je pense que c'est ce qui compte. Je n'ai pas d'objections personnellement à ce que l'on la désigne comme enquêteur; c'est surtout une question d'attitude auprès des gens que l'on a à visiter. Je ne pense pas que l'utilisation de la terminologie "enquêteur" ou "investigator" soit de nature à susciter des craintes chez les fonctionnaires.

(As far as I am concerned, the name we use for the person who is in contact with government administration doesn't matter. I have no objection to calling him an investigator provided he can clearly present his case to officials -- this is what really counts. Personally, I have no objections to calling him "investigator" . . . it is all really a question of the attitude of the people we see. I don't believe that the use of the term "investigator" is going to create any fear amongst civil servants.)

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you. Miss Hansen.

INGER HANSEN

It's been dealt with. Thank you, Mr. Chairman.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Mr. Goodman.

BRIAN GOODMAN

Mr. Chairman, in response to Dr. Frank's question or comment, those of us who work at the Ontario Office attempt to make it perfectly clear at the outset to both the complainant and the governmental organization that we have formed no position in the matter. We make it very clear to the complainant the first time that contact is established either by the interviewer, if it's a personal attendance at our office, or at a regional hearing that we might conduct, or if the complaint is by letter, the first time that contact is established by the investigator that we are not the complainant's lawyer. Many of them of course are under the mistaken apprehension that we are advocates for the complainant at the outset. In other words that we're there to try to get the goods on the government, which of course is not the case as Mr. Moody has explained. We make it perfectly clear at the outset so there is no misunderstanding that what they can expect from our office is a

thorough, impartial investigation and that if at the end of that investigation, Mr. Maloney finds the complaint to be supported, we then do our utmost to try and secure a just resolution of the matter. Likewise under our act, as under all Ombudsman Acts, we are required to notify the governmental organization of our intention to conduct an investigation. And Mr. Maloney makes it perfectly clear in his first contact by letter that he has formed no views one way or the other, and that he is hopeful the matter can be resolved.

But I think it's that kind of communication at the outset that dispels any misapprehensions that either the governmental organization, or more particularly and more importantly the complainant may have, as to the purpose of our investigation.

One further comment, very briefly. I think that two of the panel members have outlined a very useful function that can be performed by the Ombudsman. The Ombudsman receives complaints against many Ministries and in this respect has perhaps a more total perspective. Very often different aspects of a person's complaint may relate to more than one Ministry. There may be overlapping jurisdictions between Ministries, for instance, Education, Community and Social Services. One very important function that is served by the Ombudsman, because he sees complaints against many ministries and understands the jurisdictions, is that he is able to bring together Ministries to try and work out a resolution of a person's problem where no one Ministry will accept total responsibility. Perhaps this comes under the Ombudsman as a Mediator, I don't know. But certainly it's a very important function served by the Ombudsman.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you very much, Mr. Goodman. I take it from your comments that what would really concern yourselves more in your Office is the concept of the function of the ombudsman rather than terminology used.

BRIAN GOODMAN

That's correct.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you. Please.

REG WEBB

Reg Webb, Manitoba. Firstly with regards to the investigations themselves, only yourself Mr. Chairman has made any mention this morning of the necessity to establish rapport with the civil servants with whom you are dealing and whom you're asking questions of with regards to the matter being investigated. It seems to me, and I'm sure that Eric Moody will agree, that unless you have some kind of contact and rapport with the civil servants, all you're going to get are the basic facts and the file to examine. But if the investigator himself can get down to talking to the civil servants, you will come out with a lot more facts that won't be contained in files, and I'm sure, sir, that that's what you were referring to earlier on.

One more comment I'd like to make and that is with regards to terminology. I don't think it matters whether you call him an investigator, an enquirer or whatever you will. The evidence or information you're going to obtain will be based on the personality of the investigator himself and his contact with the people from whom he's asking questions. And I don't know how things are going to happen in Quebec because Mr. Ryan, I think it was yesterday, was encouraging people to put fear into civil servants when they ask questions. I don't think you're going to get very far doing that. Thank you.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you for your comments. Jean-Marc do you want to respond? Are there any other questions? Please, Professor.

PANELIST

CHARLES FERRIS

Before Professor Friedmann speaks, could I just comment on that briefly? I think I just second what Reg Webb has

said. I think that inherent in the solution of the resolution of both these grievances as I mentioned in the paper, there were discussions held with the officials concerned and these were frank, open discussions. And the administrator shared the problems which they faced on a day to day basis, and I think they appreciated the sympathetic response. I think this was almost a preparatory thing in terms of working out a resolution of the grievances - that a feeling of mutual trust was created, and that provided the atmosphere in which a speedy resolution could be obtained. I think that if it had simply been an exchange of correspondence that these matters could have dragged on for a much longer period than in fact did take place. So I'd certainly second Reg's comments.

PANELIST

GORDON EARLE

Well, Mr. Chairman, I'd like to third that, if you can do such a thing. I thought it was quite evident from our presentation that if one can arrange a meeting with a Deputy Minister and sit down and talk with them and learn the kinds of things we learn, that that was in fact a very good indication that rapport has been established with those officers. But I did not want to, in bringing that point out, detract anything from the notable mention given to our Honourable Chairman as being the only one who pointed out this fact.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you, Gordon. Professor Friedmann.

PROFESSOR FRIEDMANN

Mr. Chairman, I would like to get one or two of the panelists to respond to one of my concerns and that is what is the target of an investigation? Is it to resolve a particular problem, or is it to get to the bottom of a particular allegation? The reason why I raise it is that there may be forms of administrative behaviour which essentially try, in a particular situation, to buy off a further investigation or deeper probing by the Ombudsman by making a concession in the individual case. And in this way, either the Ombudsman is thrown off the track or eventually the more

far reaching problems that exist in a department or division are not really brought to light. I know this is very difficult to generalize on this over a whole range of departments, over a whole office, but I was wondering if there was any Office that has a particular policy of always looking out for this kind of, sometimes even unwarranted concession. I noted that in some reports there were complaints resolved by the administration where the Ombudsman had not even reached the stage where he was convinced that the complaint was justified, or that there was something to the complaint. I was just wondering how widespread this practice is and what the Ombudsman's answer is to this.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

That's a very interesting point. Jean-Marc, could you deal with the question as to what is the target of the Ombudsman's investigation in a particular complaint?

PANELIST

JEAN-MARC DUCHARME

Quel est son objectif? A cette question, je répondrais que ça dépend du problème qui est en cause. Personnellement, je fais surtout des enquêtes de la Commission des accidents du travail. Alors, il arrive assez fréquemment que je me déplace du siège social de la Commission pour consulter le dossier, et que je puisse suggérer immédiatement la solution au problème soumis -- évidemment lorsque la plainte me paraît fondée. Par contre, dans certains autres dossiers, il peut se présenter un problème de nature légale ou un problème d'interprétation d'une disposition légale. A ce moment, je vais cueillir le plus d'information possible sur les éléments du dossier. Je dresse un rapport de cette enquête et je sou mets le tout au protecteur lui-même qui aura par la suite à prendre la décision appropriée, à savoir, conclure une plainte non fondée ou si elle est fondée, à faire la recommandation à l'autorité compétente.

(What is his objective? My answer to this question is that it all depends on the particular problem. I, myself conduct investigations of cases related to the Workmen's Compensation Board and fairly often going to the head office of the Commission to examine the file, I am able to suggest a solution to the problem. Obviously, this only happens when the complaint is legitimate. Other complaints, however, may present problems of a legal nature of interpreting a legal decision. In these cases I will gather as much information as possible on the facts of the case, put them in a report and submit the whole thing to the Ombudsman herself. She in turn will make a decision as to dismiss an unfounded complaint, and if the complaint is founded, a recommendation to the proper authorities.)

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

I'd like to have Gordon Earle just comment further. I know what Professor Friedmann is getting at. You may have rectified a complaint at a very simple level but the underlying causes of the complaint may not have been touched. And so how far do we go in our investigation. Is it just satisfactory to get the complaint rectified and then let the matter drop, or do we go behind that and go into more substantial investigation to see what really was the cause?

PANELIST

GORDON EARLE

Thank you Mr. Chairman. I should first of all point out that it has often been said, perhaps by critics of the Ombudsman's Office that the Ombudsman has very little teeth to enforce or have anything done once he makes his recommendation. I would submit to a large degree that that could in fact be true, that once you've completed the formalized process to the point of making a recommendation, ultimately the power lies in the responsive legislature, when you make your report to them, if that's the final step. Now we find that in actual practice, and I think the Acts have been designed in this matter - the Ombudsman has immense power when you look at the tool of investigation. In practically all the Acts across Canada, the Ombudsman is viewed pretty much as a Commissioner to hold investigations under The Public Inquiries Act or some similar legislation in

various provinces, and under those terms of reference, he can subpoena people, he can hold hearings, he can take evidence under oath and so forth, examine confidential files, etc. etc. You will find that most agencies, departments or individuals do not want to get into that formalized stage of investigation. Therefore he has a very immense power in that regard. And therefore I think consequently many of the complaints are resolved, at least in our experience, through the investigatory process. We personally view our function as being primarily there to resolve complaints that emanate against maladministration. If the complaint is resolved in the investigatory stage, and if we are satisfied that in being so resolved the matter is properly dealt with, then that is as far as we would go.

If, on the other hand, it is not resolved at that stage or even if it is resolved but there are other underlying problems that come to light, then obviously under our Act, and I think under other Acts, the Ombudsman is empowered to initiate say further investigation on his own motion into the more general concerns that may show up. I think that is also a function of the Office. But generally speaking our policy is that we try to resolve the matter in as quick a time as possible and in the most effective way and in a way that is satisfactory to both the complainant and the Department involved. Now if these two agree upon a resolution and we are satisfied on the basis of the information given that the matter is resolved, then I don't think it becomes our function to act as a judge, and then say, well, no we don't think this solution, this compromise that's been agreed upon is adequate, now we're going to push for something else. That is basically the approach that we take in Nova Scotia.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Miss Hansen?

INGER HANSEN

Mr. Chairman, I thought the question of Professor Friedmann's might be interested in a specialist experience. Needless to say we use the same methods as were explained, but I also see an additional role. We go to the lowest possible level and occasionally that means simply reviewing a government file. And on the basis of that we can see that the government has been well aware of the complaint and has taken steps either to rectify it or the complaint is not valid.

At that time the investigator also becomes involved in a conciliation function which consists of explaining to the complainant that he has not been unfairly dealt with. Now we don't always succeed in that function, but we try.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Charles, I think you wanted to answer one question. I'll call on you next.

PANELIST

CHARLES FERRIS

Yes with respect to Professor Friedmann's question, I think that we tend to see our role primarily as geared to the resolution of individual grievances. In this respect, I think that normally from a single case experience, where we're reluctant to generalize problems and to recommend general administrative reform based on a single experience, there are occasions based on a single experience, there are occasions when it's clear that such recommendations should be made and in such cases we do make them. Perhaps the other approach we take is that after we've had an experience with a number of cases, it becomes clear that there is a major problem in a government policy area or government administrative areas. Here we will make a formal recommendation.

Now this would probably be a two step process. We would probably state to the department or agency that we have a concern. We suggest a review, and this would also form a formal recommendation which would appear in the annual report. In the province of New Brunswick those recommendations are subject to an informal review procedures which has been established between our office, the law reform division and the Cabinet Committee on Policy and Priorities.

I'll just cite an example. Our first recommendation in this our most recent report is a review of the philosophy of the workmen's compensation scheme in New Brunswick. This is based on an experience of literally hundreds of cases, I would guess. It would appear that there are real problems with the concept of workmen's compensation in our province, and upon our return to Fredericton next week, we will be meeting with the Workmen's Compensation Advisory Board to

review some of our concerns and to set the review process in motion. So I think that there is this sort of two level approach that we take to this question.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you. Please.

MELVYN ROBBINS

Melvyn Robbins from Toronto. I think there's another approach that could also be taken to Professor Friedmann's question as to what the target of an investigation is in addition to obtaining the facts and possibly not trying to miss some underlying difficulty that may generate future cases. This comes directly from my notes this morning from Mr. Earle and Mr. Ferris' talk on my own profession of education.

It seems to me one target, and in this I would be differing from Ryan's idea of fear, that one target is to shift the agencies' view from defending their existing decision to trying to take the view of perfecting their existing decision, and also be concerned with the administration of it. I think that would be essential. As that attitude shift begins to occur, I think your work will be much easier. I'm not an empirical researcher as is my colleague, Karl, but I would suspect that this is probably occurring.

The second is to widen the balance of considerations that a decision-maker has when he's making a decision. For example, the interests of fairness and reasonableness cannot be considered without looking at the wider norms of society, particularly when investigating an educational matter. The child's right to a school, for example. This type of case, at least, was seen by the administrator who accepted the decision as overriding (and the courts have held this) - that it's the board's authority to close a school. In other words you're kind of trying to convince the decision maker that there's a broader balance of considerations, and I would hope leaving that person more competent.

On this question of the right of a child to have an education, it's an extremely strong norm in our society. What I haven't heard from most of these sessions is, what are the underlying norms or philosophies of our society that people who are working in the Ombudsman's office consider essential considerations for the administration of justice or for perfecting these particular decisions. Certainly the right to an education would be one.

I think that there would be some advantage also in hearing from other people who are not Ombudsmen or who are not working for Ombudsmen, to see how they react to this particular question and to know what they think the target of your investigation is as you present your cases. Quite often most of us make decisions and we really do not know the basis or the full implications of the decisions we're making. I would personally be interested if other people might also react to Professor Friedmann's question.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you very much. Gordon, that's a tough one. What are the underlying norms of society that you consider in forming a decision following an investigation?

PANELIST

GORDON EARLE

It is a touch one because I think probably, at least for myself, I find these are more or less, I suppose, inherent in my own basic personal beliefs. And I think as you said, one has the right to an education. But I would broaden that to more or less the right to equal opportunity whether it be in the educational field or in any other field of concern. I'd say the right to fair play and justice, that sort of thing are kind of the underlying principles which to me have survived the records of history and are the kinds of things which we go on.

Now gradually of course, social values change and different ideas and policies change, but I think certain basic values remain such as honesty, fair play, equal opportunity and so forth. These are the kinds of things that we generally find are underlying without even having to emphasize them so much to the people that we deal with and who work for us. I guess when we choose people to

work in our office they are compared to ourselves and our own background. We find, as I mentioned in my first case, that the honesty approach is a very realistic approach. Now I didn't get around to discussing my second case but in that case I was going to point out what I feel to be an important factor, and that is to allow the agency or the individual you're dealing with an opportunity to make a decision for himself which may alter the previous decision. In other words, don't box people in to the point where they feel they have to become defensive.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Just a minute, I think there was some suggestion made to me that perhaps if this panel was winding down we could adjourn and perhaps carry on the business meeting. But on reflection, this is the day for the staff of the Ombudsman. The limelight is always on the Ombudsman and never on his staff. So Gordon, that's a beautiful lead-in to your second case and what I'd like you to do now before you proceed, is how about giving us your second case and perhaps that will answer part of your question right there, at least enlarge on it.

PANELIST

GORDON EARLE

Well thank you, Mr. Chairman. I would like to, in the interest of fair play, first of all know whether or not the audience would desire this or whether they would prefer to ask questions, because I'd hate to go through to the end of the session and have someone left in the audience with a question that they would have liked to direct toward us. So perhaps if the audience would indicate by a show of hands whether they would like me to go ahead with the next case, fine. If not, I'd prefer to remain open for questions.

DR. RANDALL IVANY

Mr. Chairman, on a point of order, I think Mr. Toews has been trying to ask a question for some time and you've ignored him.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Mr. Toews.

RALPH TOEWS

Office of the Ombudsman of Alberta

Mr. Chairman, first of all I'd like to make a statement that the Ombudsman and the Ombudsman's investigators are not on witch hunts in their investigations. I think this is very important to say. I think that we have to realize in dealing with civil servants that they understand that the Ombudsman is fair, he's fair to the civil servant and he's being fair to the complainant. The investigation must be impartial and at the outset of an investigation the civil servant should be advised that the Ombudsman is gathering facts and that it is a completely impartial investigation. I would like to direct a question to the panel members, and that is, in their investigations, do they inform the civil servant of the Ombudsman's position? Thank you.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Did you get that Mr. -

PANELIST

ERIC MOODY

I'd like to respond to that question. Primarily, yes we do. Whenever we interview a government official or the people in the public sector, we inform them specifically of our intent, that we are not making any prejudgements on any position, that our position is strictly impartial and neutral and it's imperative that we get this message across, because we are not advocates. We're not riding around on white chargers righting every wrong that we come across. We are there to examine completely, impartially, those complaints that are before us and the factors that touch that complaint. I don't know whether that answers your question or not, but I believe it does.

PANELIST

GORDON EARLE

We also follow the same procedure. We make it very clear at the outset that we are not advocates for an individual nor are we anti-government. It is only when we reach a certain point in our investigation that we determine that the person has a justifiable complaint that one might say that you, at that point, appear to be an advocate for the individual. But we find that it usually puts people at great ease when they know that you are not coming, as you say, on a witch hunt, and that you are coming with a sincere effort to resolve a problem in the best way possible.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Did I miss anybody else? I'm sure Albert will bring it to my attention if I did. If not, I'd like to go back to Gordon and would you continue Gordon with the question posed.

PANELIST

GORDON EARLE

Okay, would people prefer that I cite quickly the second case, or are there further questions.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Well, you were dealing with underlying norms of society and you were leading into the second question posed by the gentlemen as to more or less conceptual approaches to the investigation. (person at mike - inaudible) If you have a question would you please come to one of the two microphones provided.

FEMALE CITIZEN

Thank you. I'm a rather ordinary citizen and have followed these meetings. I am so interested in the Ombudsman's Office, and I appreciate the fact I perhaps could have

a minute. If my view as an ordinary person is correct, and I'm involved in a community service, we see so many times civil servants making decisions. People are afraid; civil servants, witch hunts and so on - but I always get the impression that these decisions must be based on some sort of outline the civil servants have to follow, and I think it's not always his own. So if the Ombudsman could ever, in my little opinion, look into these outlines or these regulations that are available for the civil servants and then whenever a case comes up, zero in on something like that then it would eliminate many cases which the civil servant made his own decision. To make it short, I really wish Mr. Maloney could come for us ordinary people something to - if not to change - to adjust perhaps a little bit more these regulations which the civil servants up to now can go by. Thank you.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Thank you very much. Mr. Goodman would you like to respond to that.

BRIAN GOODMAN

Yes perhaps I could respond to that. Even where the Ombudsman determines that a decision has been made in accordance with law or with practice, if the Ombudsman determines that the law itself is unjust or that the practice is unjust, he can recommend that the law be reconsidered or that the practice be changed or altered. And Mr. Maloney has done this, and I'm sure almost every Ombudsman here has done that, where he has found that the decision has been in accordance with the practice or law but the underlying problem is the law or practice itself.

PANEL CHAIRMAN

JUDGE ERNEST BOYCHUK

Did you get that answer, ma'am. Maybe it's not a well known fact but I think you'll find in each investigation the investigator directs his attention as to the reason, whether it be policy or regulation as to why a certain decision was made, and that's part and parcel of each investigation, and Mr. Goodman has enlarged that if the Ombudsman feels that that practice or procedure or regulation requires

attention, the Ombudsman can recommend changes to it.

I think now that we've had a very fruitful morning with discussion, it would be appropriate to close this session. I think the consensus, I'm sure of all Ombudsmen, is that any success of an Ombudsman office depends on many factors but one thing is certain, the credibility of the office is based on sound professional investigation. Which brings to light the true facts upon which any future assessment or action taken by the Ombudsman might be based.

I would like to say in closing, to the staff particularly, although I do express my appreciation to Mr. Maloney and Mrs. Maloney for being such gracious hosts, but I would like to particularly thank the staff of the Ontario Ombudsman's Office. Those of us who are involved in conferences are fully aware of the magnitude of this undertaking. The organization, the efficiency has been without par that I've ever seen. I think you've all done a fantastically marvellous job. You got us to where we've had to go on time, you've got us back. Your program has been running marvellously well, all our needs have been attended to, and I really don't know what more one could ask. And if I could single out one person, that's Vera Holliad who was our personal attendant and I would like to thank her for her graciousness and kind attention to me and my wife, and to the other delegates from Saskatchewan. So I think this would be a very appropriate time if we would give a round of applause to the staff - not only the Ontario Ombudsman but to recognize the staff of every Ombudsman's Office as being a very important, integral part of the operation of the Office. (applause)

And now I'd like to turn the meeting back to the Chairman of this particular meeting.

KATHRYN COOPER

Thank you Judge Boychuk. I have an announcement to make, but before I do that I would like to thank our eminent panel chairman for the day. Chief Judge Boychuk is not only the Chief Judge of the Magistrate's court of Saskatchewan, he is also the public sector Price and Compensation Board Chairman in Saskatchewan, and as well as that he is a fellow Saskatonian, and so I feel very strongly in thanking him. (applause)

JUDGE ERNEST BOYCHUCK

Beware of the Saskatchewan Mafia.

KATHRYN COOPER

Now they know. I would like to read a telegram which was just delivered to me. It's addressed to Mr. Maloney and it comes via Tele Globe from Perth, Australia. It reads:

"Warmest greetings to our Canadian colleagues from the Austral-Asian Ombudsmen presently meeting in conference in Perth".

(applause)

Now it's my pleasure to conclude this session, the last panel session of the Fifth Annual National Ombudsman's Conference. Thank you very much.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

September 16, 1977

Afternoon Session

Closing Address

CHAIRMAN

AMBROSE PEDDLE

We have not officially concluded our business at the conference. We are going to proceed with a short business meeting. There are two items of unfinished business. The first item is a discussion of the proposition to have staff exchanges between the various Ombudsmen's offices, and the second item is the resolution which was presented yesterday regarding our views on the extension of the Ombudsman system throughout the country. I put forward for your consideration now the business of the exchange of staff.

ELLEN ADAMS

At our meeting last Sunday, the various assistant Ombudsmen and Directors in the Ontario Office discussed the possibility of a staff exchange. It was the feeling that there was a fairly favourable consideration of it a year ago, but no definite resolution was reached. The proposal that we wish to make to the Ombudsmen at this time, is that a pilot project of staff exchanges be started, perhaps between only two provinces right now, and that the results of that staff exchange be discussed at the next Ombudsman Conference. We would have the possibility then of either expanding it to other provinces, or dropping it if it didn't work.

The kind of time period that we had in mind was anywhere between one and six months. Some of our provinces have a small staff and it may be difficult to arrange for a long exchange from their staff to another province. For instance, the suggestion was made that if we were talking about six months, and if Newfoundland was to be part of that exchange, it would be useful to have someone come to Newfoundland at least three months before someone from your province would go to another province. It doesn't mean that when we're talking about six months that both provinces would have to do six months. It might be easier for one province to arrange for a six months exchange than for another one. In other words, what we are talking about is a rather flexible approach to a staff exchange to see whether it would be possible for us to learn as much as we can from each other. Now the staff exchanges themselves may be at several levels. They may be at the Assistant Ombudsman or Director level. They may be at the investigator level, or the support staff level as well. We can discuss today the possibility of a pilot project as well as the various levels at which such exchanges could take place. We realize, of course, that, in all likelihood, even if the Ombudsmen agree today, the project may still have to be put to the various legislatures to see whether they would agree to Ombudsman staff being used for this purpose.

I might also point out that I was advised by George Tsai that, for instance, the Federal Language Commissioner might also be interested in an exchange program of this type. I would like to leave this open for further debate. Thank you.

AMBROSE PEDDLE

Miss Adams, if I might suggest, a solution to this would be that when in effect all you're looking for is an agreement in principle...

ELLEN ADAMS

...an agreement in principle, but perhaps a bit more than that really. We would like to start a pilot project this year which would then report back to next year's...

AMBROSE PEDDLE

Would such a pilot project require the sanction of this convention? I fail to see that.

ELLEN ADAMS

It would require the agreement of the Ombudsmen to at least consider it sufficiently to take it to the legislature.

AMBROSE PEDDLE

Would you not think that the answer might be for you to put forward a motion to the effect that it be agreed in principle and then having passed that, you could proceed to set up the pilot project, come back to our next conference, report on it, and then we would pass something more substantive?

ELLEN ADAMS

Mr. Peddle, it is a marvellous motion. Therefore, I would like to make that motion.

AMBROSE PEDDLE

It has been moved by Miss Adams that this conference agree in principle to the idea of a staff exchange program, and that a pilot project be set up.

ELLEN ADAMS

During this year.

AMBROSE PEDDLE

During this year. Is there a seconder for that motion?

ALEX WEIR

I second the motion.

AMBROSE PEDDLE

Seconded by Mr. Weir. Any further discussion on the motion? There being none, I would ask for a show of hands for all those who are in favour of the motion. We proceed to the second item of business.

ELLEN ADAMS

Thank you, sir.

AMBROSE PEDDLE

We have a resolution that was presented yesterday by Dr. Ivany and seconded by Dr. Harry Smith.

"Whereas the Ombudsman concept continues to expand throughout the world and whereas 1977 marks the tenth anniversary of the introduction of the concept in Canada, and whereas all citizens of Canada should have access to an Ombudsman to deal with grievances against governmental authorities, therefore be it resolved that the Canadian National Ombudsman Conference welcomes the establishment of the Office of an Ombudsman in British Columbia by the British Columbia Legislative Assembly and encourages debate and discussion within the legislatures and parliaments of Canada of proposals that would extend the Ombudsman concept to all citizens of Canada for all levels of government."

Yes, Dr. Ivany.

DR. RANDALL IVANY

Ladies and gentlemen, there has been a great deal of debate or discussion about this resolution, and I'm always one who is leery of having resolutions come to the floor in the closing minutes of any meeting. There may be those who would want to speak briefly for or against the resolution. I think it's important for us to say that we believe in the kind of job that we're doing. I think it's important for us to be positive in welcoming new legislation, such as in British Columbia, and to go forward and suggest that the Ombudsman

institution is viable in all areas of this country. I don't think we're twisting anybody's arm or saying anything here that we're not entitled to say as a body of Ombudsmen and staff meeting together. I think it can be helpful to the rest of the world, in the United States and overseas, and I feel it's a matter in which Canada can give a very substantial lead. And for those reasons, I felt, together with Dr. Smith, that it was fairly important that this conference not end without some word being said in resolution form that would positively endorse what we all believe in.

I think, Mr. Chairman, that there may be one or two who would like to speak briefly to the resolution and I would certainly hope they would, so that anything that needs to be said or wants to be said at this point can be said. Thank you.

AMBROSE PEDDLE

Thank you, Dr. Ivany. Mr. Maloney would like to address himself to the resolution.

ARTHUR MALONEY

Mr. Chairman, fellow Ombudsmen, ladies and gentlemen. I want to speak in favour of the resolution and in support of it. When Dr. Ivany said there had been much discussion about it, he was right, because he and I have discussed this on a number of occasions. He knows my views and I've discussed it with my colleagues on a number of occasions, and I suspect the majority of us are in sympathy with what is being proposed here.

The experience in Ontario has been that we get a large number of complaints from citizens whose complaints are out of our jurisdiction because they relate to one of the federal agencies of government. I hasten to say that in Ontario we've experienced the utmost of cooperation from the federal civil servants. They haven't ever, at any time in our experience, told us: "this is none of your affair and we don't want to hear anything you have to say about this question." Instead, we have found they have more often than not bent backwards to try to assist us.

However, there's a sufficiently significant number of these complaints to cause us to feel in Ontario that there's a real need for an Ombudsman function at the federal level. I'd like to borrow very briefly an idea that Brian Goodman expressed in his presentation on Monday afternoon that the more we see of the Ombudsman function in Ontario, the more we realize its need and its applicability in a large jurisdiction. Australia has appointed a national Ombudsman. I would almost go farther than the resolution and urge the government of Canada to set up an Ombudsman function. The larger the juris-

diction, the larger the population is. The larger the population, the larger the bureaucracy that is needed to administer its needs. The larger the bureaucracy, the greater the potential for injustice, and where that potential for injustice exists, the need for an Ombudsman screams. It seems to me, therefore, that we should go on record very strongly in favour of Dr. Ivany's resolution, seconded by Dr. Harry Smith, and if it's permissible, I'll third it. (applause)

AMBROSE PEDDLE

Thank you very much, Arthur. Is there anybody else who would like to say something about this resolution? Sir Barnett Cocks.

SIR BARNETT COCKS

Mr. Chairman, Mr. Ombudsmen,

I am extremely enthusiastic about Dr. Ivany's resolution, for this reason. Before I left London, I was telephoned by one of the top newspapers and asked to say what was going to happen. I could only outline very briefly what might be going to happen, but when I get back to London, I have no doubt that the institution to which I belong, Justice, will want to know what the conference decided. It's now an axiom in Britain, and in Europe, that what Canada does today, Europe rather belatedly does tomorrow. I've been to several conferences and some I know adopt the principle that Dr. Rowat said in his address last Monday - that it isn't usual to have a resolution at the end of a conference. But I've been to others where a resolution has been taken in the vaguest terms and yet it has become a part of our history. I'll only give one instance.

In 1949, I was attending and working at the Council of Europe. (I think I'm probably the only man present who was at the Council of Europe meeting in 1949.) Somebody casually said: "Isn't it dreadful the way the Rhine is polluted and you can't even get any decent trout in the restaurants of Strasbourg because of pollution?" This issue was taken up in the form of a committee resolution that water might be looked at and purified by abolishing the discharge of mercury and other noxious subjects into the water. Well, what is a committee resolution at the Council of Europe in Strasbourg? Next step, the Council drafted a water charger and put it under the nose of reluctant governments, and asked them to sign and agree to cease the pollution of rivers. One or two governments did. (The British government always signs last on these matters because they're very timorous officially about anything new.) Finally, all the European countries signed the water charter. The result is that in the Thames at Westminster, if you bring along a rod and line, you can catch six varieties of fresh fish in a river

which was polluted for centuries. This is because the government was pushed and bullied into signing the water charter.

Now that is an example of what might be done by a simple resolution at a conference. The effect of your passing a resolution will be this. When I get back to Europe, I will be asked what the conference did, and I will say that Canada stressed, in a resolution, the importance of the Ombudsman in Canada. Now in Europe, the effect of this will be that Spain, a country which has one of the filthiest rivers on earth running through Madrid, may be inclined to follow not only the water charter of the Council of Europe but also the practice of Canada in spreading the belief in the Ombudsman system. For this reason, I very warmly support Dr. Ivany's resolution, i.e. for the practical value it will have in spreading the Ombudsman system through Europe. Thank you for listening to me. (applause)

AMBROSE PEDDLE

Thank you very much, Sir Barnett. Any further discussion before I put the resolution to the floor? There would appear to be no further discussion. Therefore, I would ask for a show of hands of all those who are in favour of the resolution. I declare the resolution carried.

Now, ladies and gentlemen. Mr. George Maltby wishes to perform an important function. Mr. Maltby.

GEORGE MALTBY

Mr. Chairman, honoured guests, ladies and gentlemen, Arthur. (applause) (background comment) Arthur, it is nearly all over, but there is one thing that will never be all over and that will be our happy and fond recollections of our meeting in Toronto this week - a most memorable meeting. The business side of it has been very, very useful, and the opportunity to meet with you, your wife, members of your staff, our colleagues in other provinces and members of their staff, and everyone who has attended this conference, has been very enjoyable and very fruitful. So I would like you to come forward, Arthur, and accept this little memento from all of the provincial Ombudsmen in Canada, and I hope that when you take this to Malafield with you, it will bring back happy memories of the meeting we have enjoyed today. Will you come forward please, Arthur.

ARTHUR MALONEY

Thank you, George. (applause) Lillian told me once that whenever there are women in an audience and you're given a presentation that's wrapped, you should open it up. Well, what a handsome volume this is. William Shakespeare; a Documentary Life by Schoenbaum. (leafing pages) - It reads:

"To Arthur Maloney Q.C., host of the Canadian Conference of Legislative Ombudsmen, Toronto, September 12 to 16, 1977, with appreciation from George Maltby, Randall Ivany, Luce Patenaude, Joe Bérubé, Harry D. Smith, Ambrose Peddle, and Kenn Barker."

Well, I thank all of you very, very gratefully for your thoughtfulness in giving me this. You couldn't have given me a more appropriate gift. One of my great sources of enjoyment is Shakespeare and all the great things he has written and this will certainly be a perpetual reminder of a wonderful conference. Thank you very, very much. (applause)

We are about to close our conference in a few minutes, so I'll quote Shakespeare. I'll say, as Romeo said, "eyes look your last, arms take your last embrace". Thank you. (applause)

AMBROSE PEDDLE

Thank you Mr. Maltby and Mr. Maloney. Don't get too engrossed in your Shakespeare book because you're going to be making a speech, don't you know. Now I will call upon Madame Patenaude, the Ombudsman or Protecteur du Citoyen of Quebec, to make a presentation.

LUCE PATENAUDE

Lillian - Mrs. Maloney. Where is Mrs. Maloney? It's not a duty but a pleasure to offer you, in the name of the Ombudsmen of Canada, these flowers and to tell you in French ...merci beaucoup. (applause)

LILLIAN MALONEY

I shall try to do in French as well as Luce did in English. Merci, Luce. Thank you so much. (applause)

AMBROSE PEDDLE

Thank you Madame Patenaude and Mrs. Maloney. I'm sure everybody agrees that the presentation was beautifully and graciously presented and likewise beautifully and graciously received.

Now I will call upon Mrs. Joy Smith, the wife of our colleague from Nova Scotia. Mrs. Smith.

JOY SMITH

Lillian, I wonder if you could come forward again, please. We want to thank you from the bottom of our hearts for all the kindness, graciousness and hospitality to us all. We'll remember it for a long, long time.

LILLIAN MALONEY

Thank you, Joy, very much. (applause) You know, I should be thanking the ladies. I had just as good a time as they did, even more so I think. Thank you very much, Joy. (applause)

AMBROSE PEDDLE

Thank you Mrs. Smith and Mrs. Maloney. Now ladies and gentlemen, I'm in the prospect of introducing Arthur Maloney to a National Conference of Ombudsmen, directly across from his offices on Queen Street. This is something akin to presuming to introduce Pierre Elliot Trudeau to the Liberal Caucus in Ottawa...or any variation of that which suits your particular political preference.

I'm not going to presume, in the accepted sense, to tell you about Arthur Maloney's career. That would be a waste of time. Everybody knows about that. I'll just make a few comments. I'd like to make one comment about being very impressed with the visit to Arthur's office a few days ago in the morning. There were two highlights of that visit. First, we visited the computer room which is "manned" by a very attractive, and obviously pregnant, young lady. Although it wasn't necessary for her to tell us, she told us that she was pregnant. She was exuding all the particular beauty that people in that, "delicate condition", we call it down our way, exude. However, she spent some time extolling the virtues and the fantastic capabilities of the computer, and when I was leaving I asked her to ask it if it's going to be a boy or a girl. Obviously that machine couldn't tell her that, and I would like to think that the young lady felt a little better as a result.

Another highlight was a visit to the rather extensive file room, a big room with all four walls covered with files stacked ceiling high, which to me was most interesting. It was overwhelming but it was still interesting. I asked a young lady there if she'd like to take a look at our files sometime, and she said she'd love to, and her face lit up. I think she thought she was going to get a trip to Newfoundland. I told her the next time I came through Toronto I would bring them, and let her take a look at them. (laughter, applause) It's now my pleasure to present to you our very prominent, competent, hospitable, eloquent and most generous host, Arthur Maloney.

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ARTHUR MALONEY

Well, Chairman Peddle, thank you for your very kind introduction. I suppose the visit to the office produced different highlights to different people. (laughter) I notice that the distinguished representative of Newfoundland was impressed by the pregnant members of the staff, and by the large number of files. Well, I want to assure you that everything is on the up and up in both places. (laughter)

First of all, I want to thank Rabbi Monson for honouring us with his presence. He comes here at a very important part of a great conference - the closing. This is deliberate on my part because Rabbi Monson, a very well known and a very popular figure in Toronto, is a private Ombudsman in his own right. There is no one who does more good among the population than he does. It is fitting, therefore, that this self-created Ombudsman should be with us as we come to the end of our proceedings.

There are just a few words of thanks that I would like to express, on behalf of all of you from all over the country, to the people in the Toronto office who have devoted so much time to the organization of this conference. I know you would want me to thank Ken Cavanagh, our Director of Communications. (applause) There isn't a detail that Ken overlooked. I can't recall a single incident coming up in the last week in which there was the slightest oversight. Ken, your organization of the convention and the logistics that you arranged are just absolutely incredible, and everyone has made that comment to me about our convention. Thank you very, very much. (applause)

Then I would like also to extend your thanks and congratulations to his immediate assistant, Alice Murray, who spent even more hours at the project than he did. (applause) On their immediate staff are Gordon Thompson, Darlene Haywood, Natalie Kelton, and Janet Ortved. Thanks, all of you, very much.

I also want to thank: Gwen Lynch, from Investigations, who manned the Conference Registration Desk throughout the week and assisted with the pre-registration in the hotel; the pages, Maureen Cavanagh and Anne Ortved; Pierre Langelier, who assisted in connection with setting up our conference headquarters; Corinne Boyer, who assisted with luncheon tickets; Milan Then, who coordinated the host and the hostesses; and John Ferris, who assisted Gordon Thompson with bus transportation and with security. These people are all from our office and I want to thank all of you very much. (applause)

I would also like to mention two officers of the Ontario

Provincial Police who were so graciously provided to us by the Commissioner, Harold Graham - Constable Terry Ozon and Constable Jerry Demers. Thank you.

The program itself - the remarkable panels, the subject matters selected for discussion, and the preparation of all the working papers that preceded these panels and were distributed to the panelists to give the program continuity - was the handiwork of Brian Goodman, and the law students who worked under his direction. Brian, it was a masterful piece of work. (applause) Glenn Hainey, John Beaufoy, thank you, too, for all you did to make it a success. We're very, very grateful to you, and Niels Ortved, as well. (applause). Brian, Glenn, John, Niels, Ken and myself formed the committee and it was a great role for the Ombudsman to play. You just then, had to watch the others do the work and then sit back, in admiration, when you saw the results that they produced. Thanks, all of you. (applause)

I'm very impressed with the facilities that have been given to us by the Sheraton Hotel. There was never an incident in the conduct of the convention in which they let us down, and I'm very grateful to the management of this hotel for what they've done. (applause) Also I'd like to express the thanks of our group to the news media for their presence, and for their interest in our conference. It was very important that the news media witness this conference as we sat here as Ombudsmen to listen and to learn with the panel discussions that took place during the week.

I want also to make a very special comment again about the Select Committee on the Ombudsman in Ontario. The Select Committee, as you know, is made up of ten members of the legislature, of all three political parties, chaired by Mike Davison, the NDP member for Hamilton Centre. The Committee is otherwise made up of Margaret Campbell, John Eakins and Gordon Miller, all Liberals; John Turner, George Taylor, Osie Villeneuve and Dr. Bob Elgie, from the Conservatives, and Ross McClellan and Jim Renwick of the NDP.

These ten members manifested an interest in the work of the Ombudsman Conference that impressed me and my colleagues. I can't recall a single session of the conference at which several of them were not present with John Bell, their counsel, and Alex McFredries, their clerk. We're deeply grateful to you for your interest and very, very impressed by the presence that you manifested on so many occasions. Thank you all. (applause)

Incidentally, reading that story I told last night about Margaret Campbell, the Taming of the Shrew, I just want you to know that I not only told that with her permission, I told it by her command. She insisted I tell it.

Cette semaine a été une grande réussite. Les Ombudsmen du Canada se sont réunis pour participer à un colloque de valeur inestimable. Nous avons eu l'occasion d'écouter des experts dans plusieurs domaines. Nos connaissances du rôle et des fonctions de l'Ombudsman sont maintenant beaucoup plus vastes. Mes capacités de servir les citoyens ont été grandement élargies. J'en ai beaucoup appris et beaucoup profité.

Le Québec a été représenté tout le long de la conférence, comme j'ai dit hier soir, par une délégation impressionnante et importante. Les membres de cette délégation sont Madame Luce Patenaude, Protecteur du citoyen, ses assistants, Monsieur Robert Lévêque et Monsieur Gérard Fournier, accompagnés de leurs épouses, et Monsieur Jean-Marc Ducharme. Monsieur Claude Ryan, directeur du journal Le Devoir et journaliste bien connu, a participé au panel sur l'Ombudsman et les média. Un des plus distingués fonctionnaires du Québec, Monsieur Robert Normand, nous a fait le plaisir de participer aux discussions sur l'Ombudsman et la fonction publique. Le chef de l'opposition à l'Assemblée nationale du Québec, Monsieur Gérard Lévesque a contribué aux discussions sur l'Ombudsman et l'Assemblée législative. Je suis très fier de la présence et de l'appui de mes grands amis du Québec.

(This week has been a great success. Canadian Ombudsmen met to take part in an extremely valuable seminar. We had the opportunity to hear experts in many fields. Our knowledge of the role and function of the Ombudsman has been greatly increased. My abilities to serve the citizens have been enormously enhanced. I have learned and benefitted a great deal.

As I said last night, Québec has been represented throughout the conference by a large and impressive delegation. The members of this delegation are Mrs. Luce Patenaude, Protecteur du citoyen, her assistants, Mr. Robert Lévêque and Mr. Gérard Fournier who are accompanied by their wives, and Mr. Jean-Marc Ducharme. Mr. Claude Ryan, Publisher of the newspaper Le Devoir and a well known journalist, participated in the panel on The Ombudsman and the Media. One of Québec's most distinguished public servants, Mr. Robert Normand, honoured us by taking part in the discussion on The Ombudsman and the Civil Service. Mr. Gérard Lévesque, Leader of the Opposition in the Québec National Assembly, contributed to our discussions on The Ombudsman and the Legislature. I am very pleased that my good friends from Québec were able to attend and offer their support.)

I want to thank: Frank Flavin, from Alaska; Barbara Frost, from Seattle; Ken Bratton, from Edinburgh; and Jean Bernard Marie, from Strasbourg. (He'll do something about those fish in Strasbourg, I'm sure.) I'm very glad too that we had the opportunity to welcome, so early after his appointment, Max Yalden. Thank you, Max, for being here with us, and George Tsai, your assistant. (applause) Inger Hansen, as you leave your present responsibility where you've done so much good for the unfortunate people of the population who live in our prisons at the federal level, we wish you well in your new enterprise, your new endeavour. Thanks also to the others who are present in the capacity of observers - university professors who added a lot to our deliberations and university Ombudsmen. I want to pay a special tribute to Chief Judge Ernie Boychuk. We will always look upon him as an Ombudsman, even though he has assumed the important responsibilities of Chief Judge of the Magistrates Court of Saskatchewan. And, of course, Sir Barnett Cocks. It will always be a pleasant memory with us that you came to join us for our conference. We will always remember the inspiring opening keynote address that you gave, Sir Barnett. We will all read it and reread it, and profit from it. And Lady Cocks, thank you, too, for the charm and grace you lent to all our deliberations. Thanks to both of you. (applause)

I want to thank the Premier, Bill Davis, and his government, for the lovely dinner they gave us on Tuesday night. I think that was a great occasion. It manifests a degree of respect for our office and support for its continuance by the government of the largest province in the country, and I think that this is very important and very significant for all of us to realize.

I want to thank too the church men who came to take part in our deliberations: Cardinal Flahiff, from Winnipeg, who told us we should become experts in humanity; Bishop Snell the retired Anglican Bishop of Toronto; Rabbi Plaut, and today, Rabbi Monson. These people have added a new dimension to our deliberations.

I want to thank all my fellow Ombudsmen, my colleagues whose appointment preceded mine and who willingly shared their greater knowledge and experience with me at all times in the last two and a half years that I have been attempting to discharge these responsibilities in Ontario. I'm sorry the conference is almost over. I apologize for having worked you too hard. I think the only free time you had was Monday night after about 9:00. I agree that this was not very much free time, but I felt that since we were only going to be together a week, we should try to cram into those days as much as we could that would be of use and benefit to us in the performance of our functions.

I'm very, very grateful to the panelists, to all of those who participated from Monday afternoon right through to this morning. It would be impossible to name them. All we have to do is to re-read our programs, and our memories of the things they said and the lessons they taught us will be recalled to mind.

From my point of view, the purpose of this conference was an occasion for us to sit back and to listen and to learn. It has been a gigantic seminar, to which we invited the public. The permanent record that has been kept of our proceedings will be available to us all, to be read and re-read, to be marked and book-marked, and to be used and consulted time and time again in the future.

We came here to get advice as Ombudsmen from some very well qualified panelists. I learned much and my job was given a new dimension by the advice and the admonitions that were given to all of us by so many people I respect. We were listening to some very well informed people. The people we serve. We may not be, but the offices we hold are. We are, if you examine our function closely and correctly, the ordinary man's corridor of access to the seat of power. We're the ordinary man's assurance of fairness and justice at the very core of the governing process. If we are reasonable men and women in the performance of our duties, if we are adequately budgeted, if we are competently staffed, there is no limit to the good that we are able to do. If, on the other hand, we are denied the funds we need, prevented from engaging the staff we require, and quartered in premises insufficient for a proper performance of our responsibilities, it were better we were never appointed. Then we would only be a facade, a front, and people would be misled into thinking that they had a crutch when in fact they had nothing at all. I'm proud of the facilities I've been given in Ontario, and I have deepest possible admiration for the men and women, young and old, who are the Ombudsman's Office of this province. Surveys in Alberta, Nova Scotia, Newfoundland, and Ontario indicate the bureaucracy in our provinces are content with us, are happier with us than they would be without us. The reason for this state of mind is not hard to find. It is because we have lived up to our heavy obligation of objectivity. When a complainant comes to us, we study his complaint, we research it, we investigate it. If we find it has merit, as so very many of them do, we battle with all the vigour that we can, using all the resources at our command. If, on the other hand, we conclude the bureaucrat has been unfairly accused, unjustly charged, which is also quite often the case, we have a plain duty to come to his defence, as indeed we have.

We serve the ordinary man, but who is he? We serve the little man. How do you define him? I view the Ombudsman as the spokesman for the citizen who otherwise speaks alone and whose voice, when he cries out against a huge bureaucracy, cannot be heard, unless an Ombudsman takes up his case. At that point, the loudspeaking equipment is turned on, as it were, and we effectively complete in a civilized shouting match with those who have been unfair.

It follows, therefore, we will not always be acting for the poor. We'll sometimes find ourselves acting for the rich, sometimes for people of the upper middle class. One fundamental characteristic of the Ombudsman function is that it must be representative of every segment of the society it serves - rich and poor, black and white, Catholic, Protestant, Jew or total non-believer, of every race and every language. The day we cut off a client simply because he's rich, then we've set a precedent that would enable us to cut off a complainant because he was black, because he was Catholic, or because he was a Jew.

Professor Rowat was critical of my office when he spoke, recently, in Victoria as part of a panel of which I was also a member. He said my office was a middle-class operation in the sense that I only helped the middle-class that I should have a storefront operation. The ordinary man would be happier. Well, the statistics show, that my clients, in the vast majority of cases, are not of the middle-class, are not rich.

They belong to the ranks of the poor and to the disadvantaged. We attempted a storefront operation, by holding hearings in the east end and the west end, but we found that the people didn't respond to our presence in their midst. Our Office at Queen and Bay Street was apparently sufficiently convenient to suit their purposes.

I wonder how you'd approach a complainant if you used the approach that he indicated. What would you say to him? When he comes to you with a complaint would you say "Do you have any money?" And if he said yes, and you asked how much, and he told you, you'd say to him: "Well, you're rich, you're middle class. I can't help you. You're not poor. You're not on welfare. You're not a minority group. You're not in prison." I suppose the first thing the denied complainant would then say is: "But the tax dollar to finance your operation has come out of the wallet of my hip pocket. Why must I pay the cost and be disentitled to any benefit from your office?" He would say this means the Ombudsman is an extension of the legal aid plan. Really, when a complainant puts the question to you that way,

it's unanswerable.

Professor Rowat was critical of the waiting room in my Office. He thought it was too elegant. He said it reminded him of a dentist's reception room. I took offence at that. I said it's much nicer than any dentist's reception room. I said it is as it is because I put it that way deliberately because of my experience as a lawyer in the courts. When I travelled around this province, I saw the squalor and the inadequate circumstances, the undignified conditions that prevailed where the public had to wait who were waiting justice in the courts - their parents, their relatives, their friends. I was determined that if I ever had a public office in which the public were to be served, they'd never have to wait for me in that kind of squalor. The Office at Queen and Bay was set up to serve every citizen in the province, and that Office was set up to make every citizen in the province feel at home, and it will remain that way so long as I am the Ombudsman.

It is true, as I've said before, the majority of our clients will always be the poor, the disadvantaged, and they'll always be given very high priority in any office supervised by me. But so long as I'm the Ombudsman, it will serve everyone and its doors will be open to all.

The next conference will doubtless assume a different aspect than this one. We came to this one to sit back and to listen and to learn. The next conference will be less structured, less star-studded with brilliant panelists to teach us. From now on, we'll study the material that was accumulated here this week and perhaps come forward with even further resolutions than the ones we considered today. For example, I can see as possible future resolution coming out of the panel - the Ombudsman and the News Media. Should we be recommending a news media Ombudsman? I wouldn't want to take a stand on that issue today. I'd want to study and re-study, read and re-read the contributions of Cameron Smith, Claude Ryan, Borden Spears. Then I'd want to augment their contribution by studying additional material. Then I'd be prepared to take a stand one way or the other and I think we should because it's a burning question. In conclusion, then, as I say goodbye to you, I remind you that there's no appointed office in the public service that is more especially the property of the people than one that you and I fill - the Office of the Ombudsman. In this province, the Attorney General who is responsible for providing the prosecutors who prosecute us, the judges who try us, has a budget of over \$100 million a year. Correctional Services who are responsible for keeping us in jail, has a budget of about \$120 million a year. The Solicitor General who is responsible just in part for the policing of the province, has a budget of about \$120 million a year. The Revenue Ministry that collects the monies from us to help defray the

the costs of these ministries and agencies of government, it has a budget of comparable size. To do all these things these various ministries and agencies have to be highly staffed, heavily financed. An Ombudsman doesn't do any of those things. He doesn't try anyone. He doesn't prosecute anyone. He doesn't put anyone in jail. He doesn't police them or collect money from them. We investigate a complaint and if there is merit, the citizen knows we will befriend him, and that the total cost to him will be only fraction of the cost of all the other ministries and agencies of government I mentioned. As I say, it is an office that belongs more especially to the people than any other office in the public service. Wherever I go around this province and I've travelled extensively, I've sensed a warmth toward the Ombudsman function, toward the people who are trying to help the ordinary citizen, that makes me realize we've got a big job to do and that the people appreciate what we're trying to do to help them. I wish you well, all of you, and I wish you bon voyage as you return to your provinces. Thank you very much. And I turn the meeting back to Ambrose Peddle. (applause)

AMBROSE PEDDLE

Thank you very much, Arthur. I'm sure that we'll all return to our respective provinces strengthened and bolstered and very much enriched by the sincerity and the depth of the philosophy that you've expressed.

I now call upon the distinguished Rabbi David Monson of Beth Sholom Synagogue of Toronto to present the closing invocation. Rabbi Monson.

RABBI DR. DAVID MONSON
Beth Sholom Synagogue
Toronto, Ontario

Thank you very much, Mr. Chairman. Judaism believes in culmination, and this conference concludes in the holiest period for the Jewish people, the period between Rosh Hashana, the New Year, and Yom Kippur, the Day of Atonement. I am deeply grateful to one whom I consider one of Canada's greats, Arthur Maloney, for the opportunity of standing before you. My feeling is enhanced by the fact that there is a representative here from Great Britain, a land where I was in prior to D-Day for two years, and, after VE Day, until returning to Canada as a Chaplain of the Canadian Army. I'm grateful also to Arthur and Lily Maloney that, today, I have renewed a friendship that started in 1934 when I represented Canadian youth at a debating contest in New York City and won that contest from Dr. Bernard Frank. It was a turning point to my life. My mother said to me, if you win, you're in for the rabbinate. If you lose, you become a lawyer. Dr. Bernard Frank

became a lawyer, and he's here today, and I consider him a winner because he's here today, and I also consider myself a winner because of having been a Chaplain in World War II overseas and serving the great Jewish community since '39.

Before I close, dear friends, may I say how proud I personally am, that a young man is here at whose parents' wedding I officiated and whose father was a decorated member of the Royal Canadian Navy. I am grateful that we have been able to give Arthur Maloney (and Athur Maloney is still at the threshold of his contribution to Canada) our Brian Goodman.

My dear friends, Dr. Randall Ivany made my day by informing that in 1980, there will be an International Conference in Jerusalem, the land which gave us the Prince of Peace, the land which gave us prophet and sage and partriarch. I hope to be with you in 1980. I just can't wait to guide Dr. Ivany around the boulevards and avenues of the Holy Land. I'll be your spokesman in Hebrew on that occasion. Thank you.

Oh heavenly Father we beseech thee, that the Ombudsmen assembled here who have in their power the welfare of human beings, all created in thine image, realize always the sacredness of their trust. Bless all those assembled here, oh Lord, with the faith, the daring and the vision to help bring about a society wherein none shall be master and none shall be slave, wherein all shall share the blessings of life, liberty and happiness, those blessings that we enjoy in our beloved Canada under our gracious majesty, the Queen, celebrating this year her 25th year of reign as we pray for her well-being. And may the spirit of democracy and freedom that is ours, in Canada, part of the British Commonwealth of Nations, pervade all the earth and be enjoyed by all human beings everywhere as we all say, Amen. Thank you dear friends.

AMBROSE PEDDLE

Thank you very much, Rabbi, and may I add, with sincerity, the land that gave us Rabbi Monson. It's now with a mixture of relief, that we don't have to subject ourselves to the tremendous hospitality that we've been having the past week, and a great measure of reluctance, that a great experience has come to an end, that I now declare this 1977 Conference of the Canadian Ombudsmen officially closed. (applause)

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

A P P E N D I C E S



P R O G R A M M E

CONFÉRENCE CANADIENNE DES OMBUDSMEN LÉGISLATIFS - 1977

"Le régime de l'Ombudsman ...
un prolongement de la démocratie?"

TORONTO
DU 12 AU 16 SEPTEMBRE 1977



A G E N D A

THE CANADIAN CONFERENCE OF LEGISLATIVE OMBUDSMEN - 1977

"The Ombudsman Plan ...
An Extension of Democracy?"

TORONTO
SEPTEMBER 12-16, 1977

LE DIMANCHE
11 septembre

HÔTEL SHERATON CENTRE

à partir de:

13h.00

INSCRIPTION

La réception pour les participants à la
Conférence se trouve dans le Hall de
l'hôtel, à gauche de l'entrée principale,
côté ouest, rue Richmond.

20h.00 à

22h.00

RÉCEPTION D'ACCEUIL pour les participants
à la Conférence et les invités à:

Sir William Campbell House
160, rue Queen ouest
Toronto

(Tenue de ville
facultative)

SUNDAY
September 11

SHERATON CENTRE HOTEL

From:

1:00 p.m.

CONFERENCE REGISTRATION

Special desk located in the Lobby
of the hotel - on the left of the
main entrance, Richmond Street West.

8:00 p.m. -

10:00 p.m.

WELCOMING RECEPTION for Conference
participants and guests at:

Sir William Campbell House
160 Queen Street West
Toronto

(Dress Informal)

LE LUNDI
12 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM SOUTH

9h.15

L'assemblée est appelée à l'ordre
- Monsieur Arthur Maloney, C.R.
Ombudsman de l'Ontario

Prière

- Son Eminence le Cardinal George Bernard
Flahiff, C.S.B., D.D.
Archevêque de Winnipeg

Monsieur Arthur Maloney, C.R., hôte de la
Conférence, souhaite la bienvenue

Au nom de tous les députés de l'Assemblée
législative de l'Ontario, Le docteur Stuart
Smith, Député provincial et Chef de
l'opposition, souhaite la bienvenue aux
participants à la Conférence

10h.00

Monsieur Roderick Lewis, C.R., Greffier de
l'Assemblée législative de la Province de
l'Ontario, présente le conférencier principal

10h.10

Allocution principale

- Sir Barnett Cocks, K.C.B., O.B.E.
Ancien greffier de la Chambre des Communes
Westminster, Londres (Angleterre)

11:10

Discussion de l'allocution principale
dirigée par:

- Le professeur Donald C. Rowat
Département des Sciences politiques
Université Carleton, Ottawa

11h.40

L'auditoire est invité à participer
à la discussion

12h.15

La séance est levée

MONDAY
September 12

SHERATON CENTRE HOTEL
DOMINION BALLROOM SOUTH

9:15 a.m.

Conference is brought to order
- Arthur Maloney, Q.C.
Ombudsman of Ontario

Divine Invocation

- His Eminence George Bernard
Cardinal Flahiff, C.S.B., D.D.
The Archbishop of Winnipeg

Official Welcome by Conference Host
- Arthur Maloney, Q.C.

Official Welcome on behalf of all of
the Members of the Legislature of
Ontario to the Conference partici-
pants

- Dr. Stuart Smith, M.P.P.
Leader of the Opposition
Province of Ontario

10:00 a.m.

Introduction of Keynote Speaker by
- Roderick Lewis, Q.C.
Clerk of the Legislative Assembly
Province of Ontario

10:10 a.m.

Keynote Address
- Sir Barnett Cocks, K.C.B., O.B.E.
Former Clerk of the House of Commons
Westminster, London, England

11:10 a.m.

Discussion of Keynote Address led by
- Professor Donald C. Rowat
Department of Political Science
Carleton University, Ottawa

11:40 a.m.

Audience Participation

12:15 p.m.

Session Ends

LE LUNDI
12 septembre

HÔTEL TORONTO
GOVERNOR GENERAL'S SUITE

12h.30

Réception et déjeuner
offers par:

La Corporation de la Municipalité
du Toronto métropolitain

Allocution:

Monsieur Paul V. Godfrey
Président du Conseil

MONDAY
September 12

HOTEL TORONTO
GOVERNOR GENERAL'S SUITE

12:30 p.m.

Reception and Luncheon
hosted by:

The Corporation of the Municipality
of Metropolitan Toronto

Address by:

Paul V. Godfrey
Chairman of the Council

LE LUNDI
12 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM SOUTH

14h.30

L'assemblée est appelée à l'ordre
- Monsieur Gilles Morin
Directeur du Service des Affaires
rurales, agricoles et municipales
Bureau de l'Ombudsman de l'Ontario

"L'OMBUDSMAN - LE TITULAIRE OU L'INSTITUTION?"

Président
du panel:

Le docteur Bernard Frank
Comité sur l'Ombudsman
Association internationale du Barreau
Allentown, Pennsylvanie (États-Unis)

Panelistes
(par ordre de
présentation):

Le docteur Harry D. Smith
Ombudsman de la Nouvelle-Écosse

Madame Luce Patenaude, C.R.
Le Protecteur du Citoyen
Province de Québec

Monsieur Alex B. Weir
Conseiller juridique
Bureau de l'Ombudsman de l'Alberta

Monsieur Brian P. Goodman
Directeur du Service des Enquêtes
Bureau de l'Ombudsman de l'Ontario

15h.30

L'auditoire est invité à participer
à la discussion

16h.45

La séance est levée

MONDAY
September 12

SHERATON CENTRE HOTEL
DOMINION BALLROOM SOUTH

2:30 p.m. Conference is brought to order
- Gilles Morin
Director of Rural, Agricultural
and Municipal Services
Ombudsman of Ontario

"THE OMBUDSMAN - THE PERSON OR THE FUNCTION?"

Panel Chairman: Dr. Bernard Frank, Chairman
Ombudsman Committee
International Bar Association
Allentown, Pennsylvania, U.S.A.

Panelists (in
order of pres-
entation): Dr. Harry D. Smith
Ombudsman of Nova Scotia

Luce Patenaude, Q.C.
Le Protecteur du Citoyen
Province of Quebec

Alex B. Weir
Solicitor to the
Ombudsman of Alberta

Brian P. Goodman
Director of Investigations
Ombudsman of Ontario

3:30 p.m. Audience Participation

4:45 p.m. Session Ends

LE LUNDI
12 septembre

CHAMBRE 228
LEGISLATIVE BUILDING
QUEEN'S PARK

17h.15 Départ de l'Hôtel Sheraton Centre par
autobus pour se rendre à Queen's Park

17h.30 à
19h.00 Visite et réception offertes par les
membres du Comité d'enquête de
l'Assemblée législative de l'Ontario
sur l'Ombudsman

Président: Monsieur Michael N. Davison
 Député provincial

19h.15 Retour, par autobus, à l'Hôtel Sheraton
Centre

Soirée libre

MONDAY
September 12

ROOM 228
LEGISLATIVE BUILDING
QUEEN'S PARK

5:15 p.m. Buses depart Sheraton Centre Hotel
 for Queen's Park

5:30 p.m. - Tour and Reception hosted by the
7:00 p.m. Members of the Select Committee of
 the Legislature of Ontario on the
 Ombudsman

Chairman: Michael N. Davison, M.P.P.

7:15 p.m. Buses return to Sheraton Centre Hotel

Evening - free

LE MARDI
13 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM NORTH

- 8h.00 Petit-déjeuner offert aux participants
à la Conférence par le personnel du
bureau de l'Ombudsman de l'Ontario
- 9h.00 Les participants à la Conférence visitent
les locaux du bureau de l'Ombudsman de
l'Ontario

HÔTEL SHERATON CENTRE
DOMINION BALLROOM SOUTH

- 10h.00 L'assemblée est appelée à l'ordre
- Madame Ellen Adams
 Directeur des Services spéciaux
 Bureau de l'Ombudsman de l'Ontario

"L'OMBUDSMAN ET LIBERTÉ D'INFORMATION"

- Président
du panel: L'honorable John N. Turner, C.P., C.R.
Toronto, Ontario
- Panelistes
(par ordre de
présentation): Monsieur Gerald W. Baldwin, C.R., Député fédéral
Peace River
Province de l'Alberta
- Monsieur Donald C. MacDonald, Député provincial
York South
Province de l'Ontario
- Madame Margaret Campbell, Député provincial
St. George
Province de l'Ontario
- 10h.45 L'auditoire est invité à participer
à la discussion
- Midi La séance est levée

TUESDAY
September 13

SHERATON CENTRE HOTEL
DOMINION BALLROOM NORTH

8:00 a.m. Continental Breakfast for Conference
Participants hosted by the staff of
- The Ontario Ombudsman's Office

9:00 a.m. Tour of the Ontario Ombudsman's Offices
by Conference Participants

SHERATON CENTRE HOTEL
DOMINION BALLROOM SOUTH

10:00 a.m. Conference is brought to order
- Ellen Adams
Director of Special Services
Ombudsman of Ontario

"THE OMBUDSMAN AND ACCESS TO INFORMATION"

Panel Chairman: The Honourable John N. Turner, P.C., Q.C.
Toronto, Ontario

Panelists (in
order of pres-
entation): Gerald W. Baldwin, Q.C., M.P.
Peace River
Province of Alberta

Donald C. MacDonald, M.P.P.
York South
Province of Ontario

Margaret Campbell, M.P.P.
St. George
Province of Ontario

10:45 a.m. Audience Participation

Noon Session Ends

LE MARDI
13 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM NORTH

Midi

Réception et déjeuner

Présidé par:

Le docteur Harry D. Smith
Ombudsman de la Nouvelle-Écosse

Allocution:

Monsieur Joseph E. Bérubé
Ombudsman du Nouveau-Brunswick

TUESDAY
September 13

SHERATON CENTRE HOTEL
DOMINION BALLROOM NORTH

Noon

Reception and Luncheon

Chair:

Dr. Harry D. Smith
Ombudsman of Nova Scotia

Address:

Mr. Joseph E. Bérubé
Ombudsman of New Brunswick

LE MARDI
13 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM SOUTH

14h.00

L'assemblée est appelée à l'ordre
- Le colonel John P. Page, E.D., C.D.
Directeur, Responsable du bureau de
l'Ombudsman de l'Ontario à Queen's Park

"L'OMBUDSMAN ET L'ASSEMBLÉE LÉGISLATIVE"

Président
du panel:

Sir Barnett Cocks, K.C.B., O.B.E.
Ancien greffier de la Chambre des Communes
Westminster, Londres (Angleterre)

Panelistes
(par ordre de
présentation)

L'honorable Monsieur le Juge C. W. Clement
Division des appels de la Cour suprême
Province de l'Alberta

Monsieur Stephen H. Lewis, Député provincial
Chef du Nouveau parti démocratique
Province de l'Ontario

Monsieur Gérard Lévesque, Député
à l'Assemblée nationale
Province de Québec

Monsieur Norman Webster
Journaliste parlementaire
Le 'Globe and Mail', Toronto

15h.00

L'auditoire est invité à participer
à la discussion

16h.15

La séance est levée

TUESDAY
September 13

SHERATON CENTRE HOTEL
DOMINION BALLROOM SOUTH

2:00 p.m.

Conference is brought to order
- Col. John P. Page, E.D., C.D.
Director, Queen's Park Office
Ombudsman of Ontario

"THE OMBUDSMAN AND THE LEGISLATURE"

Panel Chairman:

Sir Barnett Cocks, K.C.B., O.B.E.
Former Clerk of the House of Commons
Westminster, London, England

Panelists (in
order of pres-
entation):

The Honourable Mr. Justice C. W. Clement
Supreme Court Appeal Division
Province of Alberta

Stephen H. Lewis, M.P.P.
Leader of the New Democratic Party
Province of Ontario

Gérard D. Lévesque, M.N.A.
Leader of the Opposition
Province of Quebec

Norman Webster
Legislative Journalist
The Globe and Mail, Toronto

3:00 p.m.

Audience Participation

4:15 p.m.

Session Ends

LE MARDI
13 septembre

18h.00

Départ de l'Hôtel Sheraton Centre pour
se rendre, par autobus, au quai. Excursion
en 'bateau mouche' jusqu'à

La Place de l'Ontario
Toronto

19h.00

Réception et dîner offerts par le
gouvernement de la Province de l'Ontario
sous les auspices de

L'honorable Pauline McGibbon
Lieutenant-gouverneur de l'Ontario

(Tenue de ville)

23h.00

Les autobus partent de l'entrée principale
de la Place de l'Ontario pour retourner à
l'Hôtel Sheraton Centre

TUESDAY
September 13

6:00 p.m.

Buses depart Sheraton Centre Hotel
for transportation by Amsterdam-style
canal boat (glassed-in) to

Ontario Place
The Waterfront
Toronto

7:00 p.m.

Reception and Dinner hosted by the
Government of the Province of Ontario
in the presence of

The Honourable Pauline M. McGibbon
Lieutenant-Governor of Ontario

(Dress: Business Suit)

11:00 p.m.

Buses return from Ontario Place
Main Entrance to Sheraton Centre
Hotel

LE MERCREDI
14 septembre

SÉANCE HORS VILLE

10h.15

Départ de l'Hôtel Sheraton Centre pour se rendre, par autobus, à la ferme de Monsieur Maloney (Malafield) à Rockwood, Ontario (distance de 47 milles)

Midi

Réception et déjeuner à la ferme Malafield

Tél: (519) 856-4640

WEDNESDAY
September 14

OUT-OF-TOWN SESSION

10:15 a.m.

Buses depart Sheraton Centre Hotel
for Maloney farm (Malafield) Rockwood,
Ontario (47 miles)

Noon

Reception and Luncheon at the farm

Tel: (519) 856-4640

LE MERCREDI
14 septembre

MOHAWK INN
CAMPBELLVILLE

14h.20 L'assemblée est appelée à l'ordre
- Monsieur Gary Speranzini
Directeur du Service des Entrevues
Bureau de l'Ombudsman de l'Ontario

LES DÉLÉGUÉS SE RÉUNISSENT EN SESSION D'AFFAIRES

Président de Monsieur Kenn Barker
la séance: Assistant de l'Ombudsman
Province de la Saskatchewan

Programme:

- 1) Compte rendu des réunions du Comité directeur international des Ombudsmen, tenues à Paris du 10 au 16 mai 1977 par
- Le docteur Randall E. Ivany
Ombudsman de l'Alberta
- 2) Lieu de la Conférence nationale en 1978
- 3) Suggestions quant à l'ordre du jour pour la Conférence de 1978
- 4) Possibilité de programmes d'échange de personnel
- 5) Affaires diverses

16h.00 La séance est levée

16h.15 Départ du Mohawk Inn, pour se rendre, par autobus, à Stratford

WEDNESDAY
September 14

MOHAWK INN
CAMPBELLVILLE

2:20 p.m. Conference is brought to order
- Gary Speranzini
Director of Interview Services
Ombudsman of Ontario

BUSINESS SESSION FOR DELEGATES

Session Chairman: Kenn Barker
Assistant to the
Ombudsman of Saskatchewan

- Agenda:
- 1) Report on International Ombudsmen
Steering Committee Meetings held
in Paris, May 10-16, 1977 by
- Dr. Randall E. Ivany
Ombudsman of Alberta
 - 2) Location of the 1978 National Conference
 - 3) Suggested items for 1978 Meeting Agenda
 - 4) Possible staff exchange programs
 - 5) Other business

4:00 p.m. Session ends

4:15 p.m. Buses leave Mohawk Inn
for Stratford

LE MERCREDI
14 septembre

STRATFORD, ONTARIO

18h.00

Dîner au restaurant 'The Church'

20h.00

Représentation de la pièce 'As You Like It'
de Shakespeare, par la Stratford Shakespearian
Festival Company of Canada

Retour à Toronto par autobus

(Tenue de ville)

WEDNESDAY
September 14

STRATFORD, ONTARIO

6:00 p.m.

Dinner at The Church Restaurant

8:00 p.m.

Stratford Shakespearean Festival
Company of Canada Performance of
"As You Like It"

Return to Toronto by bus after
performance

(Dress: Business Suit)

LE JEUDI
15 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM SOUTH

9h.30

L'assemblée est appelée à l'ordre
- Monsieur Glenn Hainey
Adjoint exécutif auprès du Bureau de
l'Ombudsman de l'Ontario

"L'OMBUDSMAN ET LES MEDIA"

Président
du panel:

Monsieur Ken Cavanagh
Directeur du Service des Communications
Bureau de l'Ombudsman de l'Ontario

Panelistes
(par ordre de
présentation)

Monsieur Claude Ryan, Directeur
'Le Devoir', Montréal

L'honorable Judy LaMarsh, C.P., C.R.
Toronto, Ontario

Monsieur Cameron Smith
Adjoint au Directeur
Le 'Globe and Mail', Toronto

Monsieur Robert Cooper
de l'émission 'Ombudsman' de Radio-Canada
Toronto, Ontario

Monsieur Borden Spears
Rédacteur en chef et
Ombudsman de la Rédaction
'The Toronto Star', Toronto

10h.30

L'auditoire est invité à participer
à la discussion

Midi

La séance est levée

THURSDAY
September 15

SHERATON CENTRE HOTEL
DOMINION BALLROOM SOUTH

9:30 a.m.

Conference is brought to order
- Glenn Hainey
Executive Assistant to the
Office of the Ombudsman of Ontario

"THE OMBUDSMAN AND THE MEDIA"

Panel Chairman:

Ken Cavanagh
Director of Communications
Ombudsman of Ontario

Panelists (in
order of pres-
entation):

Claude Ryan, Publisher
Le Devoir, Montreal

The Honourable Judy LaMarsh, P.C., Q.C.
Toronto, Ontario

Cameron Smith
Assistant to the Editor
The Globe & Mail, Toronto

Robert Cooper
CBC Television Ombudsman
Toronto, Ontario

Borden Spears
Senior Editor and
Editorial Ombudsman
The Toronto Star, Toronto

10:30 a.m.

Audience Participation

Noon

Session ends

LE JEUDI
15 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM NORTH

Midi

Réception et déjeuner

Présidé par:

Monsieur George W. Maltby
Ombudsman du Manitoba

Allocution:

Le docteur Randall E. Ivany
Ombudsman de l'Alberta

THURSDAY
September 15

SHERATON CENTRE HOTEL
DOMINION BALLROOM NORTH

Noon

Reception and Luncheon

Chair:

George W. Maltby
Ombudsman of Manitoba

Address:

Dr. Randall E. Ivany
Ombudsman of Alberta

LE JEUDI
15 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM NORTH

14h.00

L'assemblée est appelée à l'ordre
- Monsieur Keith Hoilett
Adjoint spécial et Agent juridique
Bureau de l'Ombudsman de l'Ontario

"L'OMBUDSMAN ET LA FONCTION PUBLIQUE"

Président
du panel:

Monsieur Arthur J. Herridge
Sous-ministre adjoint des Ressources naturelles
Province de l'Ontario

Panelistes
(par ordre de
présentation):

Monsieur Robert Normand
Sous-ministre des Affaires intergouvernementales
Province de Québec

Monsieur James E. Dixon
Commissaire de la Fonction publique
Province de l'Alberta

Monsieur Glenn R. Thompson
Sous-ministre des Services correctionnels
Province de l'Ontario

Monsieur W. Niels Ortved
Expert-conseil auprès du
Bureau de l'Ombudsman de l'Ontario

15h.00

L'auditoire est invité à participer
à la discussion

16h.15

La séance est levée

THURSDAY
September 15

SHERATON CENTRE HOTEL
DOMINION BALLROOM SOUTH

2:00 p.m. Conference is brought to order
- Keith Hoilett
Special Assistant and Legal Officer
Ombudsman of Ontario

"THE OMBUDSMAN AND THE CIVIL SERVICE"

Panel Chairman: Arthur J. Herridge
Assistant Deputy Minister, Natural Resources
Province of Ontario

Panelists (in
order of pres-
entation): Robert Normand
Deputy Minister of Intergovernmental
Affairs
Province of Quebec

James E. Dixon
Public Service Commissioner
Province of Alberta

Glenn R. Thompson
Deputy Minister of Correctional Services
Province of Ontario

W. Niels Ortved
Special Consultant to the
Ombudsman of Ontario

3:00 p.m. Audience Participation

4:15 p.m. Session ends

LE JEUDI
15 septembre

18h.15 Départ de l'Hôtel Sheraton Centre pour
se rendre, par autobus, à Hart House,
Université de Toronto

18h.30 Réception et dîner à la Grande Salle
(Great Hall) de Hart House, offerts
par l'Ombudsman de l'Ontario

Conférencier L'honorable William G. Davis, C.R.
invité: Premier ministre de l'Ontario

Sujet: L'unité nationale

(Tenue de ville)

THURSDAY
September 15

6:15 p.m.

Buses depart Sheraton Centre Hotel
for Hart House, University of Toronto

6:30 p.m.

Reception and Dinner at The Great Hall,
Hart House, hosted by The Ombudsman of
Ontario

Guest Speaker:

The Honourable William G. Davis, Q.C.
Premier of Ontario

Subject:

National Unity

(Dress: Business Suit)

LE VENDREDI
16 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM SOUTH

9h.30

L'assemblée est appelée à l'ordre
- Madame Kathryn Cooper
Directeur des Recherches
Bureau de l'Ombudsman de l'Ontario

"L'OMBUDSMAN COMME ENQUÊTEUR"

Président
du panel:

Son Honneur le Juge en Chef Ernest Boychuk
Province de la Saskatchewan

Panelistes
(par ordre de
présentation):

Monsieur Gordon S. Earle
Ombudsman adjoint
Province de la Nouvelle-Écosse

Monsieur Charles Ferris
Conseiller juridique auprès de l'Ombudsman
Province du Nouveau-Brunswick

Monsieur Jean-Marc Ducharme
Assistant du Protecteur du Citoyen
Province de Québec

Monsieur Eric V. Moody
Directeur adjoint du Service des Enquêtes
Bureau de l'Ombudsman de l'Ontario

10h.45

L'auditoire est invité à participer à
à la discussion

Midi

La séance est levée

FRIDAY
September 16

SHERATON CENTRE HOTEL
DOMINION BALLROOM SOUTH

9:30 a.m. Conference is brought to order
- Kathryn Cooper
Director of Research
Ombudsman of Ontario

"THE OMBUDSMAN AS INVESTIGATOR"

Panel Chairman: His Honour Chief Judge Ernest C. Boychuk, Q.C.
Province of Saskatchewan

Panelists (in Gordon S. Earle
order of pres- Deputy Ombudsman
entation): Province of Nova Scotia

Charles Ferris
Solicitor to the Ombudsman
Province of New Brunswick

Jean-Marc Ducharme
Assistant du Protecteur du Citoyen
Province of Quebec

Eric V. Moody
Assistant Director of Investigations
Ombudsman of Ontario

10:45 a.m. Audience Participation

Noon Session Ends

LE VENDREDI
16 septembre

HÔTEL SHERATON CENTRE
DOMINION BALLROOM NORTH

Midi

Réception

Présidé par:

Monsieur Ambrose M. Peddle
Commissaire parlementaire de
Terre-Neuve

Allocution
de clôture:

Monsieur Arthur Maloney, C.R.
Ombudsman de l'Ontario

Prière:

Le docteur David Monson, Rabbin
Synagogue Beth Sholom
Toronto, Ontario

FRIDAY
September 16

SHERATON CENTRE HOTEL
DOMINION BALLROOM NORTH

Noon

Reception

Chair:

Ambrose M. Peddle
Parliamentary Commissioner
of Newfoundland

Closing
Address:

Arthur Maloney, Q.C.
Ombudsman of Ontario

Closing
Benediction:

Rabbi Dr. David Monson
Beth Sholom Synagogue
Toronto, Ontario

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

BACKGROUND PAPERS

prepared by the Office of the
Ombudsman of Ontario:

- 1 - "THE OMBUDSMAN - THE PERSON OR THE FUNCTION?"
- 2 - "THE OMBUDSMAN AND ACCESS TO INFORMATION"
- 3 - "THE OMBUDSMAN AND THE LEGISLATURE"
- 4 - "THE OMBUDSMAN AND THE MEDIA"
- 5 - "THE OMBUDSMAN AND THE CIVIL SERVICE"

BACKGROUND PAPER 1

THE OMBUDSMAN - THE PERSON OR THE FUNCTION?

The public conception of the Ombudsman focuses on his role as a protector or helper of those in trouble. In this view he himself is seen as the embodiment of his entire office, and his actions are contrasted with the workings of the vast and inhuman governmental bureaucracy with which he has to deal. The institution of the Ombudsman is seen, then, in the eyes of the public, to represent what may be called a personalizing trend in government.

It is important to remember, however, that within the framework of the Ombudsman concept there is room for a great deal of variation. There is, for example, a definite difference between an Ombudsman who personally handles every file from reception to closure, and one who presides over a large, highly specialized and multi-tiered organization. Yet both these men perform the same function and possess the same title. It would appear that the set-up of any Ombudsman office depends to a large extent upon such factors as the nature of the services which the Ombudsman feels his office should offer, the extent of his jurisdiction, the size of the bureaucracy that he has been set up to survey, the number of complaints received, and the budget allotted him by the Legislature.

Governments receive many political plaudits and kudos from the passing of an Ombudsman Act and the establishment of the office. However, having given birth to the office, there is a great temptation for governments to use, as an excuse for curtailing the Ombudsman's budget, their view that the Ombudsman should meet with each complainant face to face, and investigate each complaint personally. Is this realistic in a large jurisdiction?

Much has been written pertaining to the personal (or otherwise) nature of the Ombudsman and his office. The issue appears to be one of comparative preference: is efficiency or approachability to be given the higher priority in the establishment of Ombudsman operations? If the first, complaints are more likely to be dealt with in an expeditious manner, but the risk is run of alienating the general public by instituting what could be regarded as a second Civil Service. On the other hand, if the second, complainants are more likely to be assured that a definable someone is working for the betterment of their interests, but in this case a risk involving thoroughness of investigation and/or complaint backlog is involved. Which ideal should prevail in the event of conflict?

Walter Gellhorn, one of the most influential of all writers on the Ombudsman institution, considers the views of others on this subject:

Those who want the system greatly stress the importance of the Ombudsman's personality and his directly participating in every phase of official superintendence.

He observes, however, that this "emphasis upon personalization may discourage the Ombudsman's using other governmental resources, lest he seem to be 'passing the buck'". In the final analysis, Gellhorn avoids recommending any extreme position, choosing rather to point out the possible "perils" that lurk for an Ombudsman who is either too "rigid" or "willing to stretch too far".

One of the leading Canadian proponents for the adoption of the Ombudsman institution is Professor Donald Rowat. He is more concerned that complaints be dealt with quickly and thoroughly than he is wary of the growth of a second "bureaucracy", arguing that a satisfied client represents the real aim of the office. Dale Andreas, who did some post-graduate work under Professor Rowat, takes this point one step further, drawing a direct relationship between the number of complaints received and the "optimum number of employees".

Another noted author on the subject of the Ombudsman, and one who has devoted much time to the structure of the institution, is William Gwyn. He, too, remarks that "the size of the ... staff is mainly determined by the load of complaints". Unlike Professor Rowat, however, his primary caveat concerns the Ombudsman, in a jurisdiction with many complaints, becoming "a slow cumbersome organization" with "two or three tiers" of staff. Indeed, in his structural description of the Ombudsman's office, Gwyn is careful to point out the necessity that:

1. The citizen is put to almost no bother ... in getting his complaint before the Ombudsman.
...

5. The Ombudsman is limited in the number and thoroughness of inspections, because of his relatively small staff and the lack of time.

To overcome these limitations without enlarging the office, Gwyn proposes the creation of several separate Ombudsmen, each with a restricted jurisdiction and staff. This would serve both to "keep the complaint volume down" and "permit the Ombudsman to directly involve himself" in investi-

gations, an involvement that Gwyn feels is necessary. One wonders, however, whether this wouldn't exacerbate the plight of the complainant, who has enough difficulty in our complex system of modern government in determining which level of government has the authority over his particular problem, much less which Ombudsman he should approach, given that these Ombudsmen will have differing jurisdictions. Consider also the needless duplication of services in certain areas, for example, in the area of referrals for non-jurisdictional complaints.

It is interesting, in the face of all these limitations and restrictions, to note Gwyn's real preoccupation not so much with size per se as with efficiency. He talks in terms of "modern forms of transportation, communications, and information storage and retrieval" as being essential "for the functioning of an Ombudsman today", even with a "limited list of governmental agencies under his jurisdiction". Moreover, he recommends that "if the institution later showed a capability for handling a greater complaint load without appreciable loss of efficiency, other agencies could be added..."

It is also on the basis of efficiency, that Ben Whitaker, British M.P. and writer on several aspects of administrative reform, suggests that the Ombudsman "should take on more staff". His proposal, unlike Gwyn's, is based on an existing situation:

Up to twelve months elapse between
the receipt and determination of a complaint.....
[this]unnecessary loss of immediacy weakens public
confidence.

Interestingly enough, Whitaker sees an enlarged Ombudsman's office serving not only to clear up a complaint backlog, but also as a "personalizing idea". By "getting back to complainants quickly", the Ombudsman would "show he's different from beaureaucrats in general". Despite this optimism, Whitaker is careful to conclude on a warning note:

The office should not, of course, become
... overly large and unwieldy, so that it becomes the role of one bureaucracy to watch another.

Karl Friedmann has done a great deal of work involving statistical approaches to the activities of Ombudsmen. He is, consequently, very much concerned with quantitative criteria. Like the majority of the other authors considered so far, he

sees the establishment of "an efficient operation" as being the most important goal of the Ombudsman. This involves, for him, "thorough investigations, good decisions", and "processing petitions speedily". Unlike many writers, however, Friedmann is not at all worried about bureaucracy within the office. His analysis of staff size is in terms of the number of files handled per employee per year; the actual number of staff members is, therefore, irrelevant.

Other commentators would agree with Friedmann and posit the following syllogism: the greater the population, the larger the bureaucracy, the greater the likelihood of administrative unfairness, therefore the greater the need for an Ombudsman.

In direct contrast to Friedmann, and indeed to many other writers, is Shelomo Kaddar, Ombudsman for the City of Jerusalem. Kaddar performs the majority of investigations himself (he does have one part-time assistant). For him the prompt resolution of cases is essential - he resolves cases within a week and often within days of their receipt - but it must not conflict with his basic view of the Ombudsman:

An Ombudsman is a person and not an institution. I don't want to add another layer of bureaucracy by increasing my staff.

One of the reasons why Kaddar can so boldly affirm his belief in the personal nature of the Ombudsman is the fact that his small jurisdiction brings relatively few grievances to his notice each year; their number is, moreover, declining. (In 1976, Kaddar received 565 complaints, of which 219 were considered justified, down substantially from 1975.) Without a doubt the chief motivation behind large increases in Ombudsman staffs is larger numbers of complaints. (In Canada, statistics show that complaints received yearly by Provincial Ombudsmen increased by as much as 500% in the years 1969 to 1975.)

Another factor in the question of extended staff requirements is geographical size. More and more Ombudsmen are becoming aware of what Larry Hill, internationally known expert on the institution, calls "the concept of outreach". Increasingly, the importance, in physically large jurisdictions, of regional offices or frequent, well publicized tours of the territory, is recognized. In this way, the office can be made accessible to everyone, even if the Ombudsman himself is not.

This raises the question of initiative. Hill observes that "the Ombudsman has become 'reactive' rather than 'aggressive' in nature". This is due to the fact that, unlike his Scandinavian predecessors, the "modern Ombudsman acts only in response to received grievances". A program involving complaint initiation or the organization of independent inquiries would naturally necessitate increased personnel - conversely, a solely "responsive" office presently operating at peak efficiency would be unable to institute such a program.

Are concepts such as regular tours and regional representatives, complaint initiation and independent inquiry valuable? Are they part of an Ombudsman's legitimate function? Are the extensive and increasing demands in a large jurisdiction proof that the Ombudsman's scope is already too broad? Are the people better served in having their grievances efficiently processed by a highly structured organization, or rather more slowly dealt with by a recognizable person or small group of people? Does the Ombudsman perform his role best as an individual or as a head of a large organization? There is, as has been seen, much to be said in answer to these questions and a complete consideration of either point of view should take into account the existence of the other.

Suggestions for Further Reading

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Questions to which Members of the Panel on
"The Ombudsman - the Person or the Function?"
should address themselves

1. What is more important in the eyes of:

- (a) the public
- (b) the Civil Service
- (c) the Legislature
- (d) the press;

the person who holds the title "Ombudsman" or the functions which he and his assistants perform?

2. Does the answer to the previous question depend, to any extent, upon the population of the jurisdiction in question, including the size of the Civil Service?

3. Is efficiency or approachability to be given higher priority in the establishment of an Ombudsman operation?
Is there a happy medium?

4. To what extent should the Ombudsman be personally involved in the investigation of complaints brought to his office's attention? Is it reasonable to expect the Ombudsman in a large jurisdiction to become intimately involved in the investigation of grievances?

5. Does the Ombudsman perform his role best as an individual or as head of a large organization?

6. What is the proper role and function of assistants to the Ombudsman?

7. Are concepts, such as regular tours and/or regional representatives, complaint initiation and independent inquiry valuable?

BACKGROUND PAPER 2

THE OMBUDSMAN AND ACCESS TO INFORMATION

Freedom of information has, in recent months, been the subject of much public discussion in Canada. The Human Rights Act is currently before the federal Parliament, and several Private Members' proposals have been submitted at the provincial level. Canada is not the first country to legislate the question of access to information by the citizen and individual privacy: the United States has been actively concerned with public access to public information since the Second World War, and in Scandinavia its history dates much further back. Our current discussion on this important topic, then, should consider some aspects of the historical framework outside of our own country.

The movement towards freedom of information within Canada is also significant, however. In addition to the Private Members' Bills mentioned above, steps have been taken in a more indirect way to provide public access to personal records. The most far-reaching of these has been the adoption at the provincial level of the Swedish Ombudsman institution. The concept of an Officer of the Legislature who has the power to review almost any government document relating to a received complaint was first introduced in Canada in 1967, in the Province of Alberta. Today there is an Ombudsman in every province except Prince Edward Island and British Columbia, and legislation to provide for such a functionary has been introduced in B.C. A vital part of any discussion of freedom of information legislation in Canada must deal with the way it would interact with the institution of the Ombudsman - whether it would alter his role and, if so, how.

Sweden

Sweden has had freedom of information legislation for more than 100 years. The principle of disclosure, as laid down in The Freedom of the Press Act, means that all documents submitted to central government and local authorities must be available for public inspection. The same principle enables the mass media to monitor administrative actions. Non-disclosure is allowed only for matters of national security and the private affairs of individuals.

The Swedish Office of the Justitieombudsman (Commissioner of Justice) was first created in 1809, Sweden being the birthplace of ombudsmanship.

The office now compreses four Ombudsmen, one of them elected by the Swedish Parliament to be Administrative Chief. The responsibilites of the present Administrative Chief, Mr. Lundvik, include matters concerning the access of the general public to official documents.

One matter that singularly distinguishes the Swedish Ombudsman's Office from its counterparts around the world is its relations with the media. The Ombudsman's Office is subject to the right of disclosure as set forth in The Freedom of the Press Act, as is any other governmental organization. Consistent with this principle, members of the press, including a member of the Central Swedish Press Agency, a member of the Swedish Broadcasting System, and a reporter from the daily evening Stockholm newspaper attend the office each day in order to examine all in-coming mail and all cases decided as of that day. Frequent coverage on the part of the press makes for considerable continuing public interest in the office.

The United States

In 1946 the U.S.A. passed an Administrative Procedures Act. Section 3 of this Act represents the first North American attempt to deal with the question of access to government records. Entitled Public Information, it requires that each government agency publish its internal organization and "make available to public inspection" all final opinions and orders, and "all matters of official record" not "requiring secrecy in the public interest" or "relating solely to internal management".

In 1966 this section was considered to be overly vague, and it was amended. The list of exemptions was extended to include "unwanted invasions of personal privacy" and "matters relating to the regulation of financial institutions". In addition the question of appeals was dealt with for the first time. Subsection (c) established that "the District Court ... shall have jurisdiction ... to order the production of any records improperly withheld from the complainant".

Ontario - a Provincial Case Study

In Ontario, agitation for freedom of information legislation has only made itself heard in the past two years. Despite the approval in principle of all three parties that freedom of information legislation is desirable, no Bill has passed first reading. One of the earliest and surely the most persistent champion of public access to official records is Donald Macdonald (N.D.P. - York South). Three times since May, 1975, he

has proposed a Freedom of Information Act. In March of this year Patrick Lawlor (N.D.P. - Lakeshore) introduced an Act embodying many of the basic tenets of the earlier Bills, but in rather more detail; it died on the order paper.

None of these Private Members' Bills gives the citizen as broad a scope of inquiry as the U.S. Public Administration Act. Like the earlier legislation, strictly internal records and matters of national security were exempted from access. These were not the only areas, however. Among the documents which would have been exempt from public purvue in Ontario, though almost certainly included under American law, were those involving legal opinions, inter-provincial affairs, conflict of interest, the Executive Council, and the personal competence of an individual. Another break from the United States concerns appeals. Rather than instituting judicial review procedures, Mr. Macdonald proposed that dissatisfied complainants appeal to the provincial Ombudsman, who would then make a public report on the validity of the reasons for refusing access to the documents. Mr. Lawlor concurred with this provision, but suggested that a Judge of the High Court be established as a final level of appeal.

Even more than these opposition proposals, the draft Freedom of Information Act prepared by Frank Vasilkioti (P.C. candidate, St. George) is concerned with preserving governmental confidentiality. In addition to the exemptions proposed in the other Bills, Mr. Vasilkioti would consider withholding tax returns, adoption records, documents relating to future expropriations, general correspondence between agencies, and licence, employment or academic test questions and answers. He is also concerned about impartiality, and suggests the creation of Records Officers, each responsible for a brief quarterly resume of one agency's documentation, and the establishment of a Record Appeal Officer to ensure fairness without placing burdens on existing appeal organizations.

In the face of this support, not only from the Opposition, but from within its own ranks, for legislation relating to "Information sharing", the Ontario Government promised, in the 24 March 1977 Throne Speech, to name a Commission on Freedom of Information and Individual Privacy in the coming Session. The interests of this body would, as its name implies, be two-edged.

The Canadian Human Rights Act

On June 2, 1977, The Canadian Human Rights Act passed third reading in the House of Commons. The Bill now needs Senate approval and Royal assent to become law. Under Part IV of the Act, which deals with the Protection of Personal Information, every individual is entitled to access to records, so that accuracy may be assured, and to be consulted before personal information obtained for a specific purpose is used for a "non-derivative purpose".

Certain records may be exempt from public access should they be considered by the appropriate Minister to be injurious to national security, the functioning of the law courts, or federal-provincial relations, or to be related to an investigative body which is itself concerned with national security or the suppression of crime. In addition, if the Minister is of the opinion that certain documents might reveal personal information about another person or disclose legal advice, they too can be exempted.

With respect to the question of appeals, The Human Rights Act provides for the creation of a Privacy Commissioner, an Ombudsman-type official who would "receive, investigate and report on complaints from individuals". Should he find a complaint justified, he is to report to the Minister involved and recommend that corrective action be taken within a specified time. He is also required to submit a yearly report to the Minister of Justice on the activities of his office.

Before the Bill was passed, it attracted a great deal of criticism pertaining to the extensive discretionary powers granted the Minister. M.P. Gerald Baldwin (P.C. - Peace River) described the exemptions as "so wide and vast that you can drive a bulldozer through them". Mr. Baldwin, long a proponent of public information, had himself introduced a Freedom of Information Act with substantially fewer exemptions. He has also served on a joint Commons-Senate Regulations Committee whose first major report, tabled in February of this year, accused the Government of "using its sweeping decision-making powers to trample citizens' basic rights".

Other criticism of the Act has come from the Canadian Civil Liberties Association. Alan Borovoy, general counsel for the Association, stated that so much discretion was accorded the Ministers that they could effectively exempt the entire Government. The Canadian Bar Association has also voiced its disapproval. President A. Boyd Ferris described

the Cabinet as "unreceptive to the public access legislation", summing up the attitude of many bureaucrats as "what the people don't know can't hurt the Minister".

In a thirty-one page Brief, the Canadian Bar Association asserts that the exemptions are "too broadly framed" and enable the Minister "to exercise his discretion adversely to the rights of the individual".

The Ombudsman - Current Role

The most important distinction between a citizen's powers and those of an Ombudsman lies in the area of access to public information. Unlike an individual, the Ombudsman can obtain virtually any government document in the course of an investigation. In most Canadian jurisdictions, he is not permitted to make his report on a given investigation available to the general public, but there are no such restrictions binding the complainant or the governmental organization. After the results of the investigation have been communicated to him, the individual is free to publicize them if he wishes. The Ombudsman thus acts as a direct information release mechanism to the complainant and sometimes indirectly to the community at large as well. Most Ombudsman Acts provide that the Ombudsman is entitled to disclose in his reports, upon the completion of an investigation, "such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations." While the practice of Ombudsmen varies, most make extensive reference to pertinent government documentation in their reports to the complainant. Moreover, in certain provinces (New Brunswick, Manitoba, British Columbia), the Ombudsman has the power, if he thinks fit, to make his findings public even if neither the complainant nor the government agency desire such action. This provision firmly establishes the idea of the Ombudsman as a defender not only of certain specified rights of citizens, but of a more broadly defined public interest.

The Ombudsman - and Freedom of Information

The institution of the Ombudsman is an obvious first step on the road to Freedom of Information legislation, but if his fundamental power is one involving the release of information previously withheld from the citizen, will such legislation render his presence redundant? With this question in mind, is the desirability of a Freedom of Information Act reduced? Has the Ombudsman a role after the passage of such legislation, and if so, what is it?

As an examination of earlier proposals in the United States and Canada illustrates, the point at issue is one involving the individuals' recourse in the face of extensive exemption classifications. In America, the matter is left to the disposition of the Courts. This procedure is always costly and usually time-consuming (although it was stated in the 1966 Amendment that public information cases are to be given priority whenever possible). On the other hand, a Court can render a judgment and award penalties for non-compliance. In Canada the tendency appears to be towards reliance on an existing Ombudsman or creation of an Ombudsman-like official to act as a liaison between the complainant and the government agency. In this case, the handling of the appeal is cheap and relatively expedient, but, unlike a court of law, an Ombudsman cannot enforce his decision. Since he has power only to recommend, the ultimate disposition of complaints concerning access to information would be, as it is now, in the hands of the government. At their 31st Annual Meeting in May, the Canadian daily newspapers' managing editors called for governments to pass legislation granting citizens the statutory right to information held by the governments and their agencies, subject to certain narrowly defined exceptions. They decided that refusal and delays in granting such information should be subject to court review and enforcement, with the burden of proof on the government.

Which of these appeal procedures is, on balance, preferable? Is there some way of overcoming the objections inherent in both systems? Does another alternative exist, either a combination of earlier proposals or perhaps an entirely new approach? These are questions which should be answered before the debate on Freedom of Information is closed.

Questions to which Members of the Panel on
"The Ombudsman and Access to Information"
should address themselves

1. Why freedom of information legislation?
2. What basic provisions should any such legislation contain? Should the legislation be retroactive so as to apply to government files which predate the passing of the legislation?
3. What exceptions should the legislation contain to the citizen's right to information held by the government? Should the Ombudsman's files be exempted from freedom of information legislation?
4. If the government relies upon such an exception, should its decision, upon application by the citizen affected, be investigated by an Ombudsman or reviewed by a Court?
5. Is the legislative Ombudsman's role in investigating actions or omissions of government rendered redundant by the passage of freedom of information legislation?

BACKGROUND PAPER 3

THE OMBUDSMAN AND THE LEGISLATURE

The Ombudsman is very much a creature of the Legislature. He is created by it, funded by it, responsible to it, and he can be removed on its recommendation. Moreover, in addition to his relations with the Assembly as a whole, the Ombudsman is directly involved with the activities of individual Members and specific Legislative Committees. In the course of these close associations, questions of both a theoretical and practical significance are raised, and fundamental insights are provided, not only into the workings of the Ombudsman and his office, but also into the various conceptions of his role and function.

The Individual Member

The handling of complaints against the administration is an obviously important task in a democratic society. Before the comparatively recent spread of the Ombudsman idea, this duty was undertaken by the individual elected representative. What is the reaction of this Member to the introduction of an institution, possessing superior powers of investigation, whose primary purpose it is to manage what had formerly been part of his or her province?

Representatives differ widely in answering this question, but it is possible to break these answers into two basic groups. In the first are those who feel that the Ombudsman represents an essentially negative presence. Pointing to the already diminished role played by the individual Member in most western democracies, they note that the introduction of an Ombudsman would deprive them of one of the few remaining responsibilities they have to people they represent. In addition, they believe that the bonds linking the electors to their Members would weaken, and the Members themselves would sink in the estimation of their constituents, if the Ombudsman were, in the resolution of a controversial case or cases, to earn plaudits that could have gone to them. It was largely for this reason - a fear of the role of the M.P. being "usurped" by an Ombudsman - that the British Parliamentary Commissioner for Administration was denied the power to act on a complaint unless it had first been received by an M.P. and then forwarded by him to the office of the P.C.A. (A similar M.P. "filter" was established in France and Northern Ireland for much the same reason).

There has been a great deal of criticism of the British Ombudsman based on this considerable restriction, a substantial portion of it from M.P.'s themselves. For example, in the view of Sir Barnett Cocks, Clerk of the British House of Commons from 1966 - 73 "... there is nothing yet which can claim to be an effective and general ombudsman system in Britain ... These (full democratic rights of British voters) could only be restored by direct access to an Ombudsman, unhindered by the present subordination to members." These legislators, commentators and, naturally enough, the Ombudsmen themselves, have formed a second group of representatives. Their view of the institution of the ombudsman is primarily a positive one. To them he is a co-worker rather than a competitor, a powerful addition to an already existing body of Ombudsmen within the Legislature itself.

The Legislature could have passed a bill reposing in each and every one of the members of that day, upon the receipt of a complaint against the administration, identical powers of investigation to those it has given the Ombudsman. However, realizing that such a state of affairs would lead to chaos, the members collectively decided to provide for an official to exercise these powers of investigation on their behalf, in trust as it were, the beneficiaries being the citizens and government of the jurisdiction in question.

The Ombudsman exists, then, not to supplant the members' position, but to supplement their efforts in the field of administrative justice. Insofar as his presence would reduce the volume of complaints received, they feel that they would be able to employ more of their resources in fulfilling their legislative function.

On a practical level, there is much evidence to support this view. Bernard Frank, in his study of the Ombudsman in Nebraska, draws attention to the representatives who "emphasized the assistance that the Ombudsman would give the legislator". The Member, argued these proponents of the idea, would "be freed from the increasing demands of handling problems of constituents". Professor Frank himself lists other reasons why the public and the representative would be better served by the introduction of the Ombudsman:

The Member of Parliament has only limited funds and little or no staff, does not have access to information and files, lacks the time and expertise, is not known to many of his constituents as being available for

Mention should be made at this point of one example of a practical recommendation frequently made by Ombudsmen, but almost universally considered by Assemblies to involve such a radical departure. This concerns an increase in jurisdiction. When a Legislature establishes an Ombudsman, it grants him a certain area of competence. Any move to extend the bounds of this area is usually viewed by Legislatures in the same way that certain Members view the institution of the ombudsman itself: as an attempt to further erode their function. Thus, provincial or state Ombudsmen find it difficult to obtain jurisdiction over complaints against local authorities and those Ombudsmen with a restricted list of government agencies under their purview are generally unable to act on complaints against other important bodies even if they approach the Assembly on the subject.

Representation on such matters is made by the Ombudsman in one of two ways. The first, and most direct, is in the form of a report to the Legislature. This can be a special report on the investigation of a certain case (as permitted under the terms of the establishing Act) or an annual report on the operation of the office during the previous year. Included in these reports are various recommendations: on the re-designing of various administrative procedures within specified agencies, the improvement of communications between the office and government, or the extension (or restriction) of jurisdiction.

Once the report has been tabled and reviewed, its recommendations may be voted on. This once again poses the question of politicality. Since the Ombudsman is, or should be apolitical, a strict party vote on the subject of his report seems improper. On the other hand, if it is made a free vote, the government may be defeated. A compromise has been suggested, whereby Members may vote according to their conscience, as befits the nature of the Ombudsman office, but, since only one person is involved in the decision on a given recommendation, the vote should not be considered as a motion of confidence in the government.

The frequency of reports is also of interest. Many Ombudsmen feel that a relationship which exists, as it were, from annual report to annual report, is neither serving the best interests of the public nor of the two parties involved. In addition, they doubt whether even a voluminous yearly record provides sufficient space for a satisfactory analysis of each investigation and decision. They propose, therefore, to increase the number of representations to the Legislature

such assistance, and his role is affected by political considerations.

In a later description of the workings of the Nebraska Public Council, Professor Frank underlines the importance of the office of the individual Member, noting that, "legislators make frequent use of it not only to refer complaints, but also as an aid in research and constituent service".

In New Zealand, a survey conducted by Larry Hill shows that a vast majority of M.P.'s do not believe their own caseload to be severely affected by the existence of an Ombudsman; nor do they feel the presence of an M.P. "filter", such as had been introduced in Britain, to be necessary or indeed desirable. In Britain, on the other hand, William Gwyn's study demonstrates the drawbacks of the filter: "Because of the strength of their own position vis-a-vis the Commissioner", most M.P.'s "send to him only a tiny proportion of the complaints they receive".

The Assembly

The Legislature as a whole exerts a significant amount of control over the Ombudsman and his office. It establishes him in the first place, and has the power to remove him from office if cause is shown (this usually either on a simple or two thirds majority vote). Of greater possible import to the functioning of the office than this rarely used check on the Ombudsman himself, however, is the control by the Legislature of the budget for the entire operation. Should the Ombudsman not receive an adequate budget from the Legislature he may well find it necessary to curtail important functions and programmes such as large scale investigation on his own motion, or periodic tours of his jurisdiction.

What saves the Ombudsman from being merely the puppet of a majority party in the Assembly is one of what Stanley Anderson calls "the essential conditions of [his] existence": His "political" independence from the Legislature". Since the Ombudsman is not affiliated with any political party, it is difficult for the Legislature to refuse his requests on the grounds that they are based on a political expedience rather than real concern for the improvement of administration, because, in most cases, the Ombudsman has the theoretical approval of the Legislature as a whole (though not as has been remarked of all of its constituent members). He generally gets his way in matters that do not involve a radical departure from existing practices.

thereby improving relations and ensuring a more complete account. The problem in this situation would be a pragmatic one: does the Legislature have the time and means to meticulously consider each of the Ombudsman's several reports?

The Select Committee

The answer to that question would, in all probability, be in the negative. For this reason, in several jurisdictions (Britain, Israel, and Alberta and Ontario in Canada) a second means of making representation to the Assembly has been established in the form of a Select Committee of the Legislature. Its function is to "follow up" on the investigation and report of the Ombudsman; reporting its findings to the Legislature. Sir Hugh Monro-Lucas-Tooth, sometime Chairman of the British Committee, stated that it was not for him and his fellow members to "re-try" cases or "to review the Commissioner's findings". Rather, the concern of a Select Committee on the Ombudsman should be with:

- (a) Remedy to the aggrieved person ...
where the Commissioner found that
injustice ... had not been, or would
not be remedied;
- (b) the nature of any defect in a Department's administrative systems revealed
by the Commissioner ...
- (c) the adequacy of the Commissioner's powers
for the performance of his function.

The Committee, then, provides an important sequel to the Ombudsman's investigation in specific cases; it also serves as a more general liaison between the Government and the Commissioner, advising each of the other's position and reasons for taking it.

So far is the British Select Committee on the Parliamentary Commissioner for Administrations, for example, from playing a restrictingly adversarial role vis-a-vis the P.C.A., that it recommended he broaden his own view of his jurisdiction. H.W.R. Wade, Q.C. outlines the circumstances:

The Select Committee expressed concern that he appeared to be confining himself to relatively trivial cases, and was disclaiming jurisdiction even where a decision might be thoroughly bad in quality

... The Commissioner had also decided that he was not competent to question departmental rules. Here again the Select Committee thought that he was wrong and urged him to be bolder.

What is the proper role of the Select Committee? The Committee should certainly continue to permit the examination of issues raised in connection with individual cases; it should within its terms of reference continue to form a link between the Ombudsman and the Legislature; and it should continue to suggest areas of possible improvement within the existing jurisdiction. Should it, though, concern itself with the internal organization and day-to-day procedures of the Ombudsman's office? Will actions of this nature derogate from the Ombudsman's independence? These are matters of immediate concern to Canadian Ombudsmen and legislators, and should be considered in a discussion of the relations between the Ombudsman and the Assembly in terms of its Select Committees.

Some Suggestions for Further Reading

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Questions to which Members of the Panel
on "The Ombudsman and the Legislature"
should address themselves

1. What is the proper role of the Ombudsman vis-a-vis the elected member of the Legislature?
2. To what extent should the Ombudsman involve the elected member in the Ombudsman's investigation and report upon the constituent's complaint?
3. Is there a value,
 - (a) to the Ombudsman,
 - (b) to the Legislature, and
 - (c) to the public,in an Assembly having a Select Committee on the Ombudsman. If so, what are the functions that this Committee should perform?

BACKGROUND PAPER 4

THE OMBUDSMAN AND THE MEDIA

Ombudsmen for the Media

The media is of unquestionable influence in our society. The de facto power which it holds as society's primary supplier of information and opinion has led many to believe in the necessity of an independent Ombudsman for the media. This issue is one that ultimately reaches every person in our society and touches on a recognized fundamental freedom of any democratic society: the freedom of speech and expression.

A Media Ombudsman would be an office which members of the public could approach with complaints against the various media institutions in our society. This would include the press, broadcasters, and possibly films, records, and even books. Such an office would have the function of determining when there were inequities and improprieties in media presentations. Such an office would have to have formal powers to enforce remedial conduct by the offending member of the media.

In Sweden, a member of the public with a complaint against the press has the option to bring legal proceedings, or to go to a press ombudsman. This ombudsman operates under Sweden's Freedom of the Press Act, and is supported by the Association of Newspaper Publishers, the Union of Journalists, and the Swedish Publicist Club. The Swedish press operates under a very stringent code of ethics regarding the reporting of criminal matters, for example, the publishing of a suspect's name is strictly controlled. The strict nature of this code of ethics is explained as being due to Sweden's small and very homogeneous society. Because of the nature of this society, the impact of the media is especially strong.

The Swedish Press Council was founded in 1916, and until the 1960's was composed of a judge and three members of the press. In 1969 the Press Ombudsman was created.

When a complaint comes to this Ombudsman he determines whether a retraction or the printing of a reply will satisfy the person offended, if so, he will ask the responsible editor of the paper concerned to consider such a retraction. If the paper does not agree with the Ombudsman's request, the case is referred to the Press Council, which, if it upholds the complaint may levy a fine of approximately \$1,200. It is interesting to note this fine is constant, regardless of the seriousness of the misconduct or the size of the paper,

an exception to this being higher fines for repeated misconducts. It is also interesting to note how these fines are enforced. All the newspapers in Sweden have a contract with the Press Council, therefore, if an offending paper refuses to pay a fine levied by the Press Council, the Council can bring an action on the contract against them.

The complainant is free to bring legal action against a member of the media after the Council has given its decision. The Swedish Press Ombudsman has, however, apparently had great cooperation from the newspapers in that country. When a newspaper is rebuked it will almost always agree to publish the decision of the Ombudsman or the Press Council. The Press Ombudsman himself also publishes, from time to time, extracts intended to give the general public information regarding the system in operation in his office.

In Sweden, the Press Council and Press Ombudsman are established by law; in Ontario there is a voluntary Press Council with a similar function. The Ontario Press Council was formed in 1972, and has fourteen participating newspapers. The function of the Ontario Press Council is to consider complaints from the public about the conduct of the press in the gathering and publication of news, opinion, and advertising. It also has the function of receiving complaints from members of the press about the conduct of individuals and organizations towards the press.

The Ontario Press Council appears to have acted as a valuable mediator between members of the public and the press. But, as far as the Ontario Press Council fulfilling the role of a policeman is concerned, there are obvious drawbacks. The Council is a voluntary association and therefore has no effect on a powerful and influential newspaper such as the Globe and Mail which is not a member. Also, every complainant to the Ontario Press Council must sign a waiver agreeing not to take legal action on any complaint heard by the Council on which the council makes a finding. This may or may not limit the attractiveness and the scope of usefulness of the Press Council.

One of the recommendations of the recent Royal Commission on Violence in the Communications Industry was that there be created a federal Media Ombudsman and a Media Council. This proposed Media Ombudsman would, in many respects, greatly resemble the existing Press Ombudsman in Sweden. His function would be to operate under a Freedom of Expression Act which would, among other things, define the limits of

free expression regarding libel, obscenity, breach of the Official Secrets Act, and of matters affecting the defense of Canada. The Commission recommended that this legislation be part of the Canadian Constitution when it is patriated, and therefore occupy a position of paramountcy in our law. The National Media Council, headed by a National Media Ombudsman, would receive and act upon complaints of contraventions of the Freedom of Expression Act. This Media Ombudsman would have the power to order publication or broadcast of retractions or corrections with a prominence equal to the original item complained of.

The Media Council would have jurisdiction to receive complaints about all media: film, song lyrics on records, and radio, comic books, and media coverage of theatre and concerts.

The Commission recommended that as an alternative to the federal Media Ombudsman, a provincial Media Ombudsman be established in similar guidelines.

Another suggestion for reviewing media presentations is that of extending the powers of the existing provincial Ombudsmen to encompass the activities of the media.

Recommendations for the creation of a Media Ombudsman have elicited predictable responses. On the positive side, it has been noted that the Press Ombudsman would serve a useful function in a society where there is little or no censorship, where many personal records are open to press scrutiny, and where successful libel actions against the press are almost unheard of. The Media Ombudsman would be able to bring equity and equality to the more vulnerable victims of the press. The large and powerful can more often than not obtain a retraction or correction, the Media Ombudsman would allow the same power to the small and defenceless.

Not surprisingly, recommendations or suggestions aimed at establishing a Media Ombudsman have been met with strong fundamental objections. The apparent position of the media is that in a democracy the principle of freedom of the press is paramount and that the editorial staff of a newspaper or broadcast outlet have the perfect right to exercise their own judgment as to what is newsworthy and what should be printed and how it should be presented. It has been submitted that no public official should be allowed to demand time or space in a media presentation because that would approach turning the media into a propaganda organ of the government.

Under the present law of Canada, the freedom of speech which a newspaper has is no more than that granted every individual. That is, to speak his peace, within the limits of the law, or to ignore someone else's point of view.

The panel of media experts at a recent meeting of the Canadian Bar Association strongly criticized Canada's press, and were even more critical of the television industry. However, it was agreed that newspapers should not be licenced or regulated by the government. It seemed to have been a representative attitude that any interference with freedom of the press would destroy the very basis of democracy. A typical comment was that "one Watergate makes up for all the distortions".

In summary, the need has been expressed for an Ombudsman to supervise the media, in Sweden there is a working example of such an operation, and in North America there are various voluntary associations attempting to fulfill this function. Even if it is conceded that there is a need for a Media Ombudsman, one is faced with the difficult consideration of whether or not such a need outweighs the recognized fundamental freedom of speech and expression.

Ombudsmen in the Media

Ombudsmen have existed within the media long before the recent publication of the Ontario Royal Commission Report on Violence in the Media. For many years, newspapers in the United States and Canada have sponsored Ombudsman-type operations in the form of regularly featured "action line" columns. Here are published the grievances of various citizens against public or private bodies, and the reaction of these bodies to informal investigation by the newspaper. In this way, both the general reading public and those who have dealings with it are informed of the existence of a person or private agency that functions as a complaint-handling organization.

The reaction to these columnist Ombudsmen has been very positive. Public recognition is high, and some of the larger dailies receive thousands of communications per week. From government and business, too - about half of the complaints received by action line columns are against the private sector - the response has been generally favourable. Depending on the extent of the newspapers' circulation, as many as 80% of the grievances are rectified within a reasonable time.

Nor is the printed word the only medium that sustains an Ombudsman-like figure. In January 1974, a McLuhanesque progression resulted in the introduction of the CBC Ombudsman. His name is Robert Cooper, and three times per month, in a half hour television program format, he discusses complaints that have been brought to his attention. Much more than the newspaper "action lines", the CBC Ombudsman deals with problems concerning governmental agencies. Frequently, a civil servant involved in a specific case will be a guest on that particular segment of the show; the government is thus able to explain its actions and present its "side" of the story.

CBC Ombudsman has attracted a great deal of popular support in the two seasons it has been on the air. It is estimated that 1.2 million viewers tune in regularly, and Mr. Cooper's organization receives upwards of 10,000 complaints per year. Only a small percentage of these can be dealt with on the air, of course, but as of last summer it was reported that, of the 16,000+ letters received to date, 5,000 cases had been resolved.

Visibility has contributed greatly to the success of both the CBC Ombudsman and the newspaper action line columns. Mr. Cooper points to this recognition factor as one advantage of an Ombudsman in the media over an officer of the Legislature:

To the little men ... a regular Ombudsman ... may well be another anonymous form of government. Perhaps he would be more likely to turn to someone who has been in his living room, who is visible, who has ... a personal flavour ...

Another important advantage possessed by such an Ombudsman lies in the scope of his jurisdiction. He is not established by a statute; accordingly, there is nothing to prevent him from plunging into cases dealing with federal, provincial and municipal officials, with private individuals or corporations as well as governmental agencies. A legislative Ombudsman, on the other hand, is usually restricted to a specific level of government and is absolutely precluded from investigating matters relating to the private sector.

For all of these considerable advantages over his legislative counterpart, the private media Ombudsman possesses one enormous disadvantage. In a jurisdiction without freedom of information legislation, he cannot compel authorities to produce documents that may clarify a case. Nor can he conduct examinations under oath, hold hearings, or report to the legislature. He has, in sum, no power behind him but that of publicity, no weapon save that of public denunciation;

the forum to which he is responsible is not able, necessarily or directly, to enforce adherence to its strictures.

Moreover, this dependence on the public could result in a loss of objectivity on the part of an Ombudsman within the media. Because popular attention is more likely to be paid to reports of "irresponsible bureaucrats" making "erroneous decisions" than to reminders that "responsive civil servants" very often take steps that are "correct and enlightened", there might be a tendency to choose for public notice an unrepresentative number of cases in which the government official was in fact at fault. In this situation, the private media Ombudsman forsakes the intended role of "impartial liaison" for that of "committed advocate".

The contributions of Ombudsmen within the media are considerable, despite the weaknesses inherent in their position. They can investigate cases of all kinds, frequently in areas beyond the competence of even the least restricted of legislative Ombudsmen. The threat of publicity is usually (though not always) sufficient to allow them to conduct inquiries and resolve cases. Finally, and perhaps most important, they are, to a degree unapproachable by most creatures of the legislature, accessible to the public. From this facility of recognition is derived the ultimate strength of media Ombudsmen. By visibly benefiting the people, they also benefit the cause of Ombudsmen generally -- they are, after all, striving to attain a common goal.

Relations with the Media

Because it is such a powerful force in Canadian society, the media is capable of exerting considerable influence on a legislative Ombudsman's office. It so reflects and shapes the attitudes and awareness of the public, in fact, that the overall success of the entire operation is, to a large degree, dependent upon media support. A predominantly positive press serves to educate the public on the subject of the Ombudsman, to outline his functions, his limitations, and what problems he has in resolving complaints.

If, for example, the media takes interest in an Ombudsman operation, if it considers his office newsworthy, then people in all walks of life will be informed of his existence. Conversely, if the media shows no interest in the Ombudsman, the resulting lack of coverage will necessitate the office's undertaking its own promotional efforts. On a more specific level, if the press presents a particular recommendation in a favourable light, it is very likely that the public will also perceive

the proposal to be praiseworthy. Since the Ombudsman possesses powers of recommendation only, it is this public feeling on an issue that provides the pressure needed to trigger governmental action. Media support of the Ombudsman, and the resulting popular sympathy, therefore, could literally mean life or death for his operation.

The Ombudsman exists to serve the public - if the public were to be totally indifferent or even hostile to him, there would then be no justification for his purpose.

One of the greatest problems in the relationship between the media and many Canadian Ombudsmen concerns their inability to disclose information pertaining to actual cases. This stems from the duty of confidentiality that exists in these jurisdictions. Under these systems, the Ombudsman is precluded from approaching the media directly; if neither the complainant nor the governmental agency desire publication of the results of an inquiry, no publication is made. This situation is to be contrasted with the Swedish system, where the media operates on a daily basis from the Ombudsman's office itself. Such direct release of information ensures the existence of a positive working relationship between the office and the media, and provides for extensive coverage of Ombudsman activities. It also permits innocent persons who may have been implicated in original news reports to have their names cleared - an allowance that is not always possible in a jurisdiction where the Ombudsman is unable to initiate representation to the media.

BACKGROUND PAPER 5

THE OMBUDSMAN AND THE CIVIL SERVICE

This paper presents some of the issues which should be addressed in a discussion of the relationship between a Legislative Ombudsman and the Civil Service. The prime issues which are considered here are:

- (1) What impact does an Ombudsman have on the functioning of the Civil Service?
- (2) What is the Civil Service's attitude toward an Ombudsman?
- (3) What type of relationship exists between the Ombudsman and the Deputy Minister?
- (4) What action should a Minister consider when his Deputy Minister finds an Ombudsman recommendation unacceptable?

Survey studies concerning the Ombudsman operations in New Zealand and in Alberta have provided some interesting information concerning the relationship between an Ombudsman and the Civil Service. It appears that generally an Ombudsman operation has very little impact on the routine functioning of the Civil Service in these jurisdictions. Larry Hill's New Zealand study reported that the Ombudsman's Annual Reports were ignored by many civil servants, and were diligently read by only a few. The general impression which emerged from this study was that the Ombudsman operation had made only a few civil servants more cautious; for most there had been little or no effect. Most of those surveyed felt that the Ombudsman was good for the public image of the Civil Service in that it confirmed that many complaints were unjustified and that having a second, independent opinion to that effect satisfied many complainants.

Karl Friedmann's work in Alberta presents similar conclusions to that of the New Zealand survey. It seems that for the great majority of civil servants, the Ombudsman is no serious threat, and concern about appeals to him by complainants does not induce a lowering of standard within the Civil Service producing acquiescence to unjustified demands. The impact of the Ombudsman upon the Civil Service is subtle rather than dramatic. Perhaps in the absence of an Ombudsman scheme there is a temptation for administrators to take the citizen for granted and even take advantage of the power and security of a Civil Service position. "Of great general importance", as Israel's Ombudsman, Dr. Nebenzahl has put it, "is the deterrant effect which our activity has upon officialdom. The fact that citizens can complain to us and their

complaint will be fully dealt with, goes to influence public servants to act so properly that there will be little cause for complaints and none for justified complaints. Anyway, the better we discharge our duties, the more anxious will bureaucracy be to avoid becoming involved with us."

If a Legislative Ombudsman has little immediate dramatic effect upon the functioning of the Civil Service, what long range effects can we expect from its more subtle influence? Some have speculated that the number of complaints coming to the Ombudsman should level off, or even decline after several years of operation. Apart from generally inducing Civil Servants to become more conscientious in their work when an officer such as the Ombudsman oversees their operations, a successful Ombudsman operation may induce many administrative bodies to provide their own internal checks and complaint resolution procedures. The Ombudsman, in his position as external overseer, is also in the unique position of being able to recognize general patterns of complaints within the administration that may require reform. The potential for this type of impact is enhanced by the fact that the Ombudsman is exposed to a broad spectrum of problems which fall both within and beyond his jurisdiction.

One form of long-range impact which the Ombudsman may have on the Civil Service is that of tempering the adversarial approach to resolving disputes between governmental agencies and the individual citizen. This may check the spread of the American trend towards extending the adversary model as a means of ensuring due process in the administrative field.

Any meaningful impact which an Ombudsman operation has upon the Civil Service depends greatly on how the Civil Service perceives the Ombudsman. The relationship between an Ombudsman and the Civil Service is of necessity one of cooperation. The only coercive power which the Ombudsman wields is that of recommendation and if the Civil Servant has a favourable attitude towards the Ombudsman he is more apt to react positively to recommendations from the Ombudsman. By and large, governmental organizations fully understand the importance of the task entrusted to the Ombudsman by the law and realize that close cooperation with him increases public confidence in the administration. The fact that many citizens view the Civil Service as the great, impersonal "them", leads to the suggestion that the Ombudsman is anti Civil Service and anti Civil Servant, which he is not. As Arthur Maloney, the Ontario Ombudsman, stated in his first Annual Report, "Both my staff and I have been very impressed by the high calibre, expertise

and general level of excellence of the majority of men and women who make up Ontario's Civil Service. Their willingness, almost without exception, to accept us and to work with us in a spirit of cooperation has made the task of the Ombudsman in carrying out the duties of the office a good deal easier than otherwise would have been the case." Although there is a generally predominant desire for close cooperation between Ombudsmen and Civil Services, there are those who warn that excessive cooperation would jeopardize the interests of the complainant, while, excessive confrontation may paralyze or unduly frighten the administration.

Karl Friedmann concludes from his survey of the Alberta Civil Service that administrators have acquired predominantly favourable beliefs about the Ombudsman idea and that their general attitude is one of favourable cooperation. Friedmann found that some Civil Servants had never heard of the Ombudsman, but he explains that these were generally people in the lower ranks who had had no reason for contact with the Ombudsman. It was found that the more contact an official had with the Ombudsman, the more favourable his attitude tended to be. Attitudes were found to be similar in departments which were heavily criticized and in departments which were less criticized. Attitudes were also constant with age, sex, education, length of service, salary range and job classification. The general finding was that, rather than seeing the Ombudsman as a threat, most Civil Servants do not have occasion to think of him very much at all.

The few unfavourable attitudes which were expressed centered on behaviour of clients, cost of administration and the concentration of power in one man. Some Civil Servants felt that the Ombudsman operation encouraged complaints and that "every scratch and cut finger is taken to a doctor". It would seem then, according to this survey, that the work of a Legislative Ombudsman is viewed as a help rather than a hindrance by the Civil Service. This attitude is best explained by the reasoning that conflicts between an Ombudsman and the Civil Service do not stem from competing values but rather over differences as to how best implement shared values. Naturally enough the Civil Service sees the citizen rather than themselves as the prime beneficiary of the Ombudsman operation. In fact, on many occasions, the Civil Service and the Ombudsman have found themselves voicing the same concerns on some of the very same issues. In addition it should be noted that most Ombudsmen investigate complaints from Civil Servants against decisions or actions taken in their own ministries, which may not be the subject of a griev-

ance under either legislation or a collective agreement.

Probably the most important contact which the Ombudsman has with the Civil Service is through the various Deputy Ministers, and so it is especially important to consider the aspects of that relationship. Clearly it is in the best interests of both the Deputy Minister and the Ombudsman to have a relationship which fosters candor and cooperation. To the Ombudsman such a relationship has the advantage of lending strength and acceptability to his recommendations, thus facilitating a happy resolution of the problem presented to him. The advantage to the Deputy Ministers is that such a visibly cooperative relationship increases public confidence in the administration. The relationship must, however, be one of a happy medium, the Ombudsman and the Deputy Minister must not appear to be too close or too much at arm's length. Too close a relationship may lead to the unconscious compromising of a complainant's interests. Too much of an adversarial relationship would lead to over-cautiousness and therefore inefficiency.

It would appear that, both in New Zealand and in Ontario, in some cases preliminary informal dealings with government Department Heads and Deputy Ministers are deliberate so as to foster and retain confident cooperation of senior officials in both offices. This practice has led to the resolution of many cases without the necessity for an investigation. By inviting the head of the government agency concerned to give a statement of his position at a very early stage, there has resulted a speedy resolution of many cases. This is clearly beneficial to both the Ombudsman, the government agency, and most importantly, the complainant.

Despite the predominantly harmonious relationship between the Ombudsman and the Civil Service, it is inevitable that a Deputy Minister may on occasion find the recommendation of the Ombudsman unacceptable. A difficult question arises as to what action a Minister should take when his Deputy Minister finds a recommendation of the Ombudsman to be unacceptable. It is clear that the Minister must be cautious lest he undermine the authority of his deputy. Although Hill reports in his New Zealand survey that the Ombudsman operation had no effect on the Minister - Deputy Minister relationship, it must be recognized that the Minister finds himself in a difficult and delicate situation when faced with conflicting views of the Deputy Minister and the Ombudsman.

Suggested Sources of Further Information

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Questions to which Members of the Panel on
"The Ombudsman and the Civil Service" should
address themselves

1. What is the perception of the civil servant towards the Ombudsman and his office? Is he viewed as a help or a hindrance?
2. What patent and latent effects, if any, does the Ombudsman have upon the day-to-day operations of the governmental organizations?
3. What should the proper relationship be between the Deputy Minister and the Ombudsman?
4. What course of action should the Minister take in the event that his Deputy disagrees with the conclusions and recommendation set forth in the Ombudsman's report on the investigation of a complaint or complaints?

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

BIOGRAPHIES OF PARTICIPANTS

GERALD W. BALDWIN, Q.C., M.P.
Peace River
Province of Alberta

Gerald Baldwin was born in January, 1907 in New Zealand. A lawyer by profession, he is the owner of a farm in the Peace River area of Alberta. Educated in Alberta, and called to the Bar in 1929, he practised law in the northern part of the province.

In his political career, Mr. Baldwin was active in Peace River village politics and in 1935, he was a candidate in the provincial election.

An unsuccessful candidate in the federal election of 1957, Mr. Baldwin was elected as Tory member for Peace River in March, 1958 and has been returned in six subsequent election years. From 1962-63, "Jed" Baldwin was parliamentary assistant to Prime Minister Diefenbaker. With the Conservatives in opposition, he served from 1968 to 1976 as House Leader. Mr. Baldwin has served on the Public Accounts Committee (Chairman), the Justice Committee (Chairman), Special Committee on the Constitution (Chairman), Committee on Procedure and Organization, as well as a Senate-Commons Committee on regulations and other statutory instruments.

Mr. Baldwin is actively involved in the national movement to institute safeguards with regard to public access to information collected by governmental agencies.

WILLIAM KENNETH BARKER
Assistant to the Ombudsman
Province of Saskatchewan

Kenn Barker, the Assistant to the Ombudsman of Saskatchewan, was born in Vancouver, B.C. in January of 1922.

After receiving his education in Edmonton, he joined the Royal Canadian Mounted Police in 1942 beginning a career that lasted for 29 years.

He joined the Workmen's Compensation Board of Saskatchewan as a Claims Representative in 1971, and in October of 1973, was appointed Assistant to the Ombudsman of the Province.

Mr. Barker served as Acting Ombudsman for Saskatchewan from January 1976 until April of 1977, during the period following the resignation of Judge Ernest Boychuk, and up to the appointment of the current Ombudsman for the Province, David Tickell.

JOSEPH EDWARD BERUBE
Ombudsman
Province of New Brunswick

Mr. Bérubé is a native of Edmundston, New Brunswick, now living in Fredericton. His early education was undertaken in Edmundston and Memramcook, New Brunswick after which he attended the Arts undergraduate program at the University of Ottawa.

Mr. Bérubé studied Law at the University of New Brunswick, completed his LL.B. in September of 1957, was called to the New Brunswick Bar in that year and called to the Ontario Bar in 1958.

From 1959 until October 1960, Mr. Bérubé practised law in Sarnia, Ontario and later in Grand Falls, New Brunswick. He practised law in Edmundston, New Brunswick until his appointment as Judge of the Provincial Court in September 1965. Mr. Bérubé served in that capacity until May 20, 1976 when he was named New Brunswick's Ombudsman.

Mr. Bérubé is a past-president of the New Brunswick Provincial Court Judges' Association, and the Canadian Association of Provincial Court Judges. He is a member of the New Brunswick Barristers' Society and of the Advisory Board of the Ombudsman Committee of the International Bar Association.

HIS HONOUR JUDGE ERNEST C. BOYCHUK, Q.C.
Chief Judge of the Magistrates Court
Province of Saskatchewan

His Honour Judge Ernest C. Boychuk, Q.C., was born in the city of Saskatoon in March, 1934. His early education was undertaken in that city and in 1953 he entered the Arts undergraduate program at the University of Saskatchewan. Completing his B.A., he entered the Faculty of Law, from which he graduated in 1958. At the University of Saskatchewan he was the recipient of the Governor General's Medal for academic achievement. In 1963, he was appointed City Prosecutor for the City of Saskatoon, becoming in 1965 Assistant City Solicitor. Judge Boychuk was first appointed to the Bench in 1967 when he was named Judge of the Magistrates Court.

In 1973 Judge Boychuk was named Ombudsman for the Province of Saskatchewan and remained as Ombudsman until his appointment to the Provincial Magistrates Court in 1976. In January of that year, Judge Boychuk was named Chief Judge of the Magistrates Court for the Province of Saskatchewan, appointed Queen's Counsel and appointed Chairman of the Saskatchewan Public Sector Price and Compensation Board.

MARGARET CAMPBELL, Q.C., M.P.P.
St. George
Province of Ontario

Margaret Campbell has been a Member of the Ontario Legislature since 1973, and was formerly an Ontario Provincial Court Judge (Family Division). Prior to her appointment to the Bench, Mrs. Campbell served as Budget Chief for the City of Toronto and President of Council and Vice Chairman of the Board of Control. She was first elected Alderman for Toronto's Ward 2 in 1959 and served in this capacity and as a Member of the Board of Control until 1970. During this time she was active in the Metropolitan Toronto Legislation and Planning Committee, many city committees, Metropolitan Toronto Executive, and Metropolitan Toronto Council. Mrs. Campbell is a Graduate of the University of Toronto and a Graduate of Osgoode Hall Law School. She was appointed a Queen's Counsel in 1960.

Mrs. Campbell has been active during her career in various professional and community groups and is an honorary life member of the Board of Directors of the Metropolitan Children's Aid Society.

KEN CAVANAGH
Director of Communications
Ombudsman of Ontario

Ken Cavanagh was born in Scarborough, Ontario, in 1932 attending public and high school there until 1949.

He joined The Canadian Press as a copy-boy in 1949 and after advancing through the ranks, travelled to western Canada in 1953 to experience a number of jobs and join Radio Station CJAT, Trail, British Columbia.

He first joined the CBC in 1954 in the Vancouver Radio and TV Newsrooms, and took part in the coverage of the Commonwealth Games that year. The following year, Mr. Cavanagh returned to Toronto with the CBC, was an editor of the National News, Radio, then moved to television in 1956.

In 1960 Mr. Cavanagh joined CFTO-TV Toronto as it was going on air, then in 1961, resigned to freelance in Canada and Europe for various radio and television outlets. In 1966, he was the first host of "Telescope", Co-Host of the Montreal current events program, "Highlights", and Anchorman of the CBC-TV's Toronto evening news program, "Weekday".

Mr. Cavanagh moved to CITY-TV in Toronto in 1974 as host of the evening program, "The City Show". He resigned to join the staff of the Ombudsman of Ontario in August, 1975 where he has been Director of Communications since the creation of the office.

THE HONOURABLE MR. JUSTICE CARLTON W. CLEMENT
Supreme Court Appeal Division
Province of Alberta

Mr. Justice Clement was named to the Appellate Division of the Supreme Court of Alberta, and to the Court of Appeal for the Northwest Territories in 1970. Originally from Waterloo, Ontario, he has lived most of his life in western Canada. Completing his primary and secondary education in Winnipeg, he attended the University of Manitoba and later completed his undergraduate degree at the University of Alberta in 1927. He entered the Faculty of Law at Alberta, completed his LL.B. in 1931, and was called to the Alberta Bar in 1932.

Entering into private practice in the Town of Peace River, Alberta, where he remained for two years, Mr. Clement returned to Edmonton to practise law in partnership in the firm Clement, Parlee, Irving, Mustard and Rodney, later becoming senior partner of the firm. In 1939 he served as President of the Edmonton Bar Society. A Bencher of the Law Society of Alberta from 1960 to 1969, Mr. Clement was President of the Society, in 1968-69.

In 1966, he was named Chairman of the Special Committee of Boards and Tribunals appointed by the Alberta Legislature. Among its recommendations it proposed the institution of an Ombudsman function for the province.

SIR BARNETT COCKS, K.C.B., O.B.E.
London, England

Sir Barnett Cocks, K.C.B., O.B.E., has enjoyed a distinguished public service career since 1931. He was born in Devon, England, in 1907 and educated at Blundells Schools and Worcester College, Oxford. Sir Barnett served as a Clerk of the House of Commons, Westminster from 1931 to 1962 when he was named Clerk of the House of Commons and served in that capacity until his retirement in 1974. Among his numerous distinctions, Sir Barnett is a trustee of the History of Parliament, and from 1959 to 1973 was a member of the Association of Secretaries General of Parliament.

Internationally, Sir Barnett has represented Great Britain as a member of official House of Commons delegations to Australia and New Zealand in 1951, to Central Africa in 1954, to Ghana in 1957 and Tonga in 1973. As a representative of Westminster he has attended Commonwealth Conferences in Trinidad and Tobago, Australia, Malaysia, Gibraltar and the Isle of Man. Sir Barnett was in attendance at the North Atlantic Assembly Conference held in Canada in 1971 and at the meetings of the Association of Canadian Clerks-at-the-Table in Nova Scotia in 1974 and in Ontario in 1976.

In Europe, he has attended Inter-Parliamentary Conferences in six countries and has been closely associated in sessional work at the Council of Europe in Strasbourg from 1949 onwards. Sir Barnett served as President of the Governing Board at the International Centre of Parliamentary Documentation in Geneva in 1972, and since 1973 has been associated with the European Parliament.

Sir Barnett Cocks has edited the Erskine May's Parliamentary Practice through four editions and the Council of Europe Manual of Procedure through seven editions. He is the author of "The Parliament at Westminster" (1949), "The People's Conscience" (1952), and "Mid-Victorian Masterpiece" (1977).

ROBERT COOPER
CBC Television Ombudsman
Toronto, Ontario

A native of Montreal, Robert Cooper has been a practising lawyer, a published author, a practitioner in the civil liberties field and an entrepreneur in the theatrical and film production world, a career that also saw him assume the post of Ombudsman on the CBC National Television Network.

In addition to being the CBC Ombudsman he is currently a lecturer at the School of Social Work at McGill University in "Legal Problems of the Poor".

After being admitted to the Quebec Bar in 1970, Mr. Cooper came to national prominence as Counsel to the Quebec Commission of Inquiry into Organized Crime, first formed in that province in 1972.

A Main field of interest for him has been the provision of legal services to the underprivileged, and in addition to his current lecturing position he has taught in the past "The Poor and Legal Facilities", and among his many published articles has been, "The Role of the Poverty Lawyer". (University of Montreal Law Review - French - 1971.)

JAMES EDWARD DIXON
Public Service Commissioner
Province of Alberta

Mr. Dixon is responsible for the Personnel Administration Office of the Government of Alberta, and all aspects of personnel administration and the initiation of government personnel policy development.

Mr. Dixon graduated from the University of Alberta's Bachelor of Commerce Program in Personnel in 1964 and after 1 year as Personnel Officer with the Government of Alberta, he was appointed in 1965 Senior Classifications and Pay Officer. He returned to University in 1968 and completed a Master of Business Administration Degree specializing in Industrial Relations, in 1969. Rejoining the Alberta Government as Supervisor of Pay Research and Labour Relations in 1969, he was appointed Employee Relations Director in 1971.

Mr. Dixon was named Acting Public Service Commissioner in 1975, and Commissioner in 1976.

MONSIEUR JEAN-MARC DUCHARME
Assistant to the Public Protector
Province of Quebec

Born in Asbestos, Quebec, Jean-Marc Ducharme terminated his classical studies at the "Seminaire de Nicolet". In 1966, he entered the Faculty of Law at Laval University and graduated three years later. On May 24, 1977, after a fourth year of studies in law, he was sworn as a notary.

He practised in Asbestos for a few months. In October 1967, he became secretary and legal adviser to the Quebec Crop Insurance Board, a quasi-judicial body that had just been created, & whose mandate was to set up and administer a crop insurance programme in Quebec. Besides, he assumed the duties of secretary to the Consultative Committee on Crop Insurance.

Since October, 1975, he has been an assistant to the Quebec Public Protector, the scope of his activities covering all files regarding the Workmen's Compensation Commission, the Minimum Wage Commission and the Quebec Crop Insurance Board.

GORDON S. EARLE
Assistant to the Ombudsman
Province of Nova Scotia

Gordon S. Earle, Assistant to the Nova Scotia Ombudsman, was born and raised in Halifax. Educated in that city, he attended the University of King's College and graduated in 1963 with a Bachelor of Arts degree, majoring in Sociology.

After two years of post-graduate work in sociology at Dalhousie University, Mr. Earle entered the Nova Scotia public service as a Welfare Officer in the Halifax area.

He was later to become the first Social Development Officer for Digby County, and upon his return to Halifax in 1968 --- on a special assignment for the Social Development Division of the Welfare Department -- he worked on a part-time basis as Executive Secretary of the Human Rights Commission.

Mr. Earle was involved in the actual formation of the Human Rights Commission in Nova Scotia, and became Special Assignments Officer and later Chief Human Rights Officer.

Gordon Earle was named Assistant to the Ombudsman effective March 1972.

CHARLES MARRIOTT McKAY FERRIS
Solicitor to the Ombudsman
Province of New Brunswick

Charles Ferris has been in the employ of the Office of the New Brunswick Ombudsman in the capacity of solicitor and investigator since June, 1973. Born in August, 1948, he is a native of Saint John. Mr. Ferris holds a Masters Degree in History from the University of New Brunswick and taught history in the school system in 1969 to 1970 before returning to University to study Law. He was associated with the local legal aid office, Community Legal Aid Services, and was Director between 1971 and 1973. Upon completion of his LL.B. in 1973, and his call to the New Brunswick Bar, Mr. Ferris was a lawyer in private practice and was editor of several publications of the Maritime Law Book Company.

Charles Ferris is a member of the Barristers' Society of Fredericton and of New Brunswick and is Secretary to the New Brunswick Administrative Law Subsection of the Canadian Bar Association. He is a member of the Ombudsman Committee of the International Bar Association.

HIS EMINENCE GEORGE BERNARD CARDINAL FLAHIFF, C.S.B., D.D.
Archbishop of Winnipeg

George Bernard Flahiff, C.S.B., D.D., Archbishop of Winnipeg, was born in Paris, Ontario. A graduate of St. Michael's College, University of Toronto, and the Ontario College of Education, he joined the Congregation of St. Basil and was ordained in August, 1930. After post-graduate courses in Strasbourg, he spent four years at the Ecôle des Chartes, Paris, and from 1935 - 1954 was Professor of History at the Pontifical Institute of Mediaeval Studies in Toronto and the Graduate School of that University.

Elected Superior General of the Basilian Fathers in 1954, he was re-elected in 1960. He is past-President of the Canadian Religious Conference, Canada's national assembly of Major Superiors of Religious Orders, but resigned from that post, as well as that of Superior General of the Basilian Fathers, in 1961 at the time of his appointment as Archbishop of Winnipeg.

During the Second Vatican Council, he was appointed by Pope Paul VI to the Post-Conciliar Commission for Religious and on December 30, 1967, was made a member of the Sacred Congregation for Religious when, for the first time, its membership was extended to include seven bishops from different parts of the world.

In the Consistory of April 28, 1969, Archbishop Flahiff was created Cardinal of the Roman Catholic Church. As Cardinal, he continues to serve on the Sacred Congregation for Religious and likewise on the Congregation for Christian Education.

DR. BERNARD FRANK
Chairman, Ombudsman Committee
International Bar Association
Allentown, Pennsylvania, U.S.A.

Bernard Frank is a native Pennsylvanian, born in Wilkes-Barre in 1913, a graduate of the University of Pennsylvania Law School in 1938, and was admitted to the Lehigh County Bar in 1939. He next attended the Graduate Division for Training in Public Service at New York University between 1940 and 1942.

Presently President of Frank, Frank, Wishchuk and Penn, a professional corporation, Dr. Frank has held public office: from 1949 - 1950, Solicitor for Lehigh County Prison Board and from 1950 - 1951, the post of Assistant U.S. Attorney for the Eastern District of Pennsylvania. He has been an Allentown Assistant City Solicitor, and from 1960 - 1970, a member and

Chairman of the Allentown Housing Board of Review. From 1973 - 1975, Dr. Frank had been an advisor to the State of Pennsylvania Advisory Committee for the Nursing Home Ombudsman Demonstration Project.

A member of the U.S. Federal Bar Association, Dr. Frank was Deputy Chairman, Ombudsman Section, Committee on Administrative Law and Procedure between 1967 and 1971, and Chairman of the Section until 1974. With the American Bar Association, Dr. Frank was a member of the Ombudsman Committee, Section of Administrative Law from 1967 to 1970, and had been Chairman of that Committee from 1970 - 1975. Bernard Frank is the author of numerous legal works on the subject of the Ombudsman, published in journals and periodicals of various State, American and International Bar Associations.

BRIAN P. GOODMAN
Director of Investigations
Ombudsman of Ontario

Brian Goodman was born in June, 1947, in Toronto. He attended Forest Hill Collegiate and later the University of Toronto, completing his Bachelor of Arts, with Honours in Sociology, in 1969.

Mr. Goodman entered Osgoode Law School, York University, and received his Bachelor of Laws in 1972. He was articled to the Toronto law firm of Robbins and Robbins, which firm he joined upon being called to the Ontario Bar in 1974, practising civil and criminal litigation and labour law until joining the Office of the Ombudsman of Ontario in September, 1975.

Mr. Goodman was named Director of Research for the Ontario Ombudsman, responsible for determining the jurisdiction of the Ombudsman as it applied to the complaints and problems addressed to that office. In a re-organization of directorates within the Ombudsman's office in March, 1977, he was also appointed Acting Director of Investigations, which he assumed on a permanent basis in May of the same year.

ARTHUR J. HERRIDGE
Assistant Deputy Minister
Resources and Recreation
Ministry of Natural Resources
Province of Ontario

A native of Montreal, Quebec, Mr. Herridge graduated from the Faculty of Forestry of the University of Toronto in 1949, and following his graduation, joined the Forest Protection Branch of the then Ontario Department of Lands and Forests, serving in Kapuskasing and Sault Ste. Marie. In 1959, he transferred to the Personnel Branch at Head Office for a year of training and in 1959 became Supervisor of the Silviculture Section of the Timber Branch beginning in January, 1966, as head of the Personnel Branch.

In January, 1967, he was made Regional Director for the Northeastern Region. On September 5, 1972, Mr. Herridge was appointed to the position of Assistant Deputy Minister for Resources and Recreation. In this capacity he is concerned with the workings of the Divisions of Forests, Mines, Fish and Wildlife and Parks.

THE REVEREND CANON RANDALL E. IVANY
Ombudsman
Province of Alberta

Born in Newfoundland and educated in Ontario, Randall Ivany has been a resident of the province of Alberta since 1961.

First an electrical engineer, Dr. Ivany returned to University in 1958 to read Theology at the University of Toronto's Wycliffe College, where he graduated in 1961 with a Bachelor's Degree. He later attended St. Augustine's College, Canterbury, England, undertaking special studies in Anglican Theology.

Dr. Ivany was ordained in the Anglican Church and served parishes in Calgary, Red Deer and Oklahoma City before being elected Dean of Edmonton and Rector of All Saints Cathedral in 1969. In 1973 Wycliffe College, University of Toronto, conferred upon him a Doctorate of Divinity Degree.

Dr. Ivany has served in a variety of community organizations, most recently as President of the Edmonton and District Council of Churches, a member of the Y.M.C.A. Board, and a Member of the Planning Advisory Committee, Alberta Rehabilitation Council for the Disabled.

Dr. Ivany has served the Anglican Church in Canada on its General Synod Organization Committee, and has represented the Diocese of Calgary and Edmonton at five General Synods. He was the initiating force for the Canadian College of Preachers. He, with Bishop George Snell of Toronto, are founding members. He still serves on the Executive and teaches as time permits.

Upon relinquishing his duties as Dean, the Bishop of Edmonton appointed Dr. Ivany a Canon of the Diocese.

On May 1st, 1974, Dr. Ivany assumed the office of Legislative Ombudsman for the Province of Alberta. His term of office is for five years. In September, 1976, Dr. Ivany hosted the First International Ombudsman's Conference in Edmonton, at which time he was elected Chairman of the World Ombudsman Committee.

THE HONOURABLE JUDY LaMARSH, P.C., Q.C., LL.D.
Toronto, Ontario

Judy LaMarsh was born in Chatham, Ontario, completed her primary and secondary education in that city and in Niagara Falls, then attended the Arts undergraduate program at the University of Toronto. She studied Law at Osgoode Hall, Toronto.

The Honourable Judy LaMarsh served in the Cabinet of the late Prime Minister Lester B. Pearson; first elected as Liberal member for Niagara Falls in a 1960 by-election, she was re-elected in the elections of 1962, 1963 and 1965. Miss LaMarsh was sworn into the Privy Council and appointed Minister of National Health and Welfare in April, 1963, a post at which she remained until December, 1965, when she was named Secretary of State. In the federal election of 1968, Miss LaMarsh declined to stand for re-election, and then joined the Faculty of Law at York University, in Toronto.

Most recently, Miss LaMarsh served as Chairman of the Ontario Royal Commission on Violence in the Communications Industry, appointed in May, 1975, which consisted of Miss LaMarsh, Mr. Scott Young, Globe and Mail Columnist, and Judge Lucien A. Beaulieu, County Court Judge.

RODERICK LEWIS, Q.C.
Clerk of the Legislative Assembly
and Chief Election Officer
Province of Ontario

Clerk of the House, and Chief Election Officer for the Province of Ontario, Mr. Roderick Lewis, Q.C. is a Toronto native born in 1911. He attended public and secondary schools in Toronto, and worked briefly as a commercial artist before entering Osgoode Hall. Called to the Ontario Bar in 1939, Roderick Lewis was named Assistant Solicitor in the Succession Duty Branch, the Department of Treasury in that year, and in 1941 became Assistant Crown Attorney for Toronto and York.

From 1943 to 1945 he was on active service with the Royal Canadian Navy, and upon his discharge in 1946, was appointed Clerk-Assistant of the Legislative Assembly of Ontario. In October, 1951, Mr. Lewis became Assistant Chief Election Officer, succeeding as of January 1, 1955 to his present post of Clerk of the Legislative Assembly and Chief Election Officer. At that time he succeeded his father, Major A.C. Lewis, as Clerk of the House. Ontario now has had a Lewis in the Clerk's chair for 50 years. Roderick Lewis was named Queen's Counsel in 1957.

GERARD D. LEVESQUE, M.N.A.
Leader of the Opposition
Province of Quebec.

A Member of the National Assembly in Québec for the provincial riding of Bonaventure, and an interim Leader of the Liberal Opposition in that Province, Monsieur Gérard Lévesque earlier served in senior cabinet portfolios in the administrations of Premiers Lesage and Bourassa.

A native of Port Daniel in Bonaventure County, Monsieur Lévesque received his formal education at Gaspé Seminary, Brébeuf College and McGill University. A lawyer, he graduated a Master of Laws in 1949. Professionally, he has been associated from 1949-1960 with Sheehan and Lévesque, from 1960-1967 with Lévesque and Arsenault and from 1971-1975 with Lévesque and Landry.

First elected to the National Assembly in 1956, Monsieur Lévesque has been in the general elections of 1960, 1962, 1966, 1970, 1973 and 1976.

His first cabinet portfolio, in the administration of the Honourable Jean Lesage, was the Ministry of Fisheries and

Game, which he held from 1960 to 1962. In a cabinet change in that year, he was named Minister of Industry and Commerce, at which he remained until 1966, when the Liberals formed the Opposition to the Union National government.

With the return to power of the Liberals, in April, 1970 under Premier Robert Bourassa, Monsieur Lévesque was re-appointed to the Ministry of Industry and Commerce and was responsible as well, from 1970 to 1975, for Intergovernmental Affairs. From 1972, Monsieur Lévesque was in charge of the Office de Planification et de Développement du Québec. (Office of Planning and Development of Québec.)

Monsieur Lévesque's last portfolio was that of Minister of Justice, which he assumed in 1975.

Gérard Lévesque assumed the duties of Leader of the Opposition in November, 1976 after the defeat of Robert Bourassa, and was named Interim Leader of the Liberal Party.

STEPHEN LEWIS, M.P.P.
Leader of the New Democratic Party
Province of Ontario

Stephen Lewis, Leader of the New Democratic Party of Ontario since 1970, undertook his practical political apprenticeship with Premier T.C. Douglas of the C.C.F. Government of Saskatchewan in the mid-1950's, Canada's first socialist provincial administration. A party researcher, he was involved with the beginnings of the Saskatchewan Medical Care Plan, Canada's first such program.

Mr. Lewis studied History at the University of Toronto. In 1959, he left Canada to work for Socialist International in Britain, and later taught and travelled in Africa before returning to Canada in 1961. He then went to work for the Federal New Democrats, becoming Director of Organization. He left the Federal Party in 1963, successfully running for the Ontario provincial riding of Scarborough West, in Metro Toronto's eastern suburbs. He was re-elected in 1967, and with an earned reputation as a parliamentarian, as well as an organizer, he succeeded Donald C. MacDonald as Leader of the Ontario New Democratic Party in 1970.

Following the election of June 1977, Stephen Lewis announced his decision to resign the leadership of the Provincial New Democratic Party, with a leadership convention to be held in early 1978.

DONALD C. MACDONALD, M.P.P.
York South
Province of Ontario

Donald Cameron MacDonald was born in Cranbrook, British Columbia in 1913, was raised in the Province of Quebec and has more than 20 years of political experience in Ontario.

After his primary and secondary education, Mr. MacDonald attended teachers college, then taught public and secondary school classes from 1932 to 1937. He attended Queen's University, Kingston, and completed an Honours Degree in History, Politics and Economics in 1938, and a Master's Degree in History in 1939. Mr. MacDonald lectured for the Association for Anglo-American Understanding, travelling in Canada, Britain and the United States. In 1940 he returned to Canada where he was employed as a newspaperman for the Montreal Gazette until 1942. Joining the Royal Canadian Navy as an ordinary seaman, Donald MacDonald was later commissioned as an officer and posted to Naval Intelligence.

Mr. MacDonald's first association with the Commonwealth Cooperative Federation was in 1946, and upon his return to Canada he formally accepted a post within the organization as Education and Information Officer. From 1949 to 1953 he served as National Treasurer and Organizer. In 1955, Mr. MacDonald first stood for a seat in the Ontario Legislature, was elected, and has been re-elected without interruption in seven subsequent elections as member for York South. He succeeded to the leadership of the Ontario New Democratic Party at the time of its emergence from the C.C.F. in 1961, and remained as provincial leader until 1970. In April of 1971 he was elected to the Presidency of the Federal New Democratic Party Executive, at which post he remained until 1975.

GEORGE W. MALTBY
Ombudsman
Province of Manitoba

George Maltby is now in his second six year term as Ombudsman of Manitoba. Mr. Maltby became Manitoba's first Ombudsman effective April, 1970, and was re-appointed April 1, 1976.

Mr. Maltby is a policeman by profession. Born in Hull, Yorkshire, England, he served in the British police from 1935 to 1960. Included in his duties were C.I.D., Prosecutions and

Traffic and he is a graduate of both the Junior and Senior course programs at the National Police College.

During the Second World War, Mr. Maltby served as a pilot with the Royal Air Force. He was a Flying Instructor in Canada from 1942 - 1944 and was later posted to Bomber Command, Europe, and Transport Command, Southeast Asia.

In 1960 Mr. Maltby immigrated to Canada where he took up the duties of Deputy Chief of Police in St. James, Manitoba. In October, 1962, he was made Chief Constable of that force, a position he held when appointed Ombudsman in 1970.

ARTHUR MALONEY, Q.C.
Ombudsman
Province of Ontario

Arthur Maloney was born in Eganville, Ontario, in the Ottawa Valley in 1919, and took his university education at St. Michael's College at the University of Toronto, graduating with his B.A. in 1940. He was called to the Bar in 1943, after graduating from Osgoode Hall Law School, and developed a practice in Criminal Law. He was appointed Queen's Counsel in 1953, and was first elected a Bencher of the Law Society of Upper Canada in 1961. He continued as a Bencher until his appointment as Ontario Ombudsman in 1975, and since that time has served as Bencher ex officio.

From 1957 to 1962 Mr. Maloney represented the Toronto riding of Parkdale in the Federal House of Commons, and in 1957-1958 he was Parliamentary Secretary to the Minister of Labour.

Arthur Maloney was the first President of the Canadian Society for the Abolition of the Death Penalty, and continues as a member of the Board of Directors of that organization.

Mr. Maloney is the first Ombudsman in Ontario, and his appointment was unanimously approved by the Ontario Legislature in May, of 1975.

ERIC V. MOODY
Assistant Director of Investigations
Ombudsman of Ontario

Eric Moody now 39, is a native of Belleville, Ontario.

Upon completion of his high school education in 1957, he joined the Royal Canadian Mounted Police, where his major responsibilities were C.I.B. investigations and criminal intelligence.

Resigning from the R.C.M.P. in 1970, Mr. Moody was appointed to the Office of the Superintendent of Insurance for the Province of Ontario, responsible for the establishment of an enforcement intelligence section.

In 1973, Eric Moody joined International Intelligence Canada Ltd., a private security firm. He joined the Office of the Ontario Ombudsman in March, 1976, as Executive Assistant to the Director of Investigations, and was named Assistant Director of Investigations in August of the same year.

ROBERT NORMAND
Deputy Minister of
Intergovernmental Affairs
Province of Quebec

Monsieur Robert Normand was born in Montreal in September, 1936. A lawyer, Monsieur Normand attended the Arts undergraduate program at the University of Montreal and later the Faculty of Law at the University of Sherbrooke while serving in the Canadian Army. Graduating from Law in 1960, and called to the Quebec Bar in that year, he left the Army and on scholarships from the Governments of Quebec and France continued his studies in France at the University of Paris where he completed a program in Political Studies in 1962.

Returning to Canada, and entering the public service, Monsieur Normand was a legislative counsel to the National Assembly between 1962 and 1971. In 1968 he served as Secretary and member of a committee to study the question of expropriation in the Province of Quebec. In 1971 he taught Law at the Master's level at the University of Ottawa and Laval University.

Robert Normand was appointed Associate Deputy Minister of Justice in June, 1970, and was later made Deputy Minister of Justice in November, 1971. In 1977 he was named Deputy Minister of Intergovernmental Affairs.

W. NIELS ORTVED
Special Consultant to the
Ombudsman of Ontario

Niels Ortved was born in Toronto in September, 1945, he

completed his secondary school education at the University of Toronto Schools, and in 1964 entered the Honours Arts undergraduate program at the University of Toronto. In 1968 he entered the Faculty of Law, University of Toronto, from which he graduated in 1971, being called to the Bar in Ontario in 1973.

In 1973 and 1974, Niels Ortved practised law with the Toronto firm of Messrs. Tory, Tory, Deslauriers and Binnington, but since 1974 has carried on as a sole practitioner specializing in litigation.

Mr. Ortved served as Counsel to the Review of Metropolitan Toronto Police Complaint Procedures, a review undertaken by Arthur Maloney, Q.C., now Ontario Ombudsman.

Mr. Ortved is a Special Consultant to the Office of the Ontario Ombudsman, and is responsible for assisting in the preparation of the "Ombudsman's Blueprint", an outline of the Ombudsman's role and function in the Province of Ontario, currently being compiled.

MME LUCE PATENAUDE, Q.C.
The Public Protector
Province of Quebec

Luce Patenaude was appointed to the Office of Quebec Public Protector in September 1976.

Born in Montreal, Mme Patenaude studied Law at the University of Montreal where she graduated "Magna cum laude" and with the Lieutenant-Governor's medal. A graduate of Higher Studies option: Public Law, at the University of Ottawa, she obtained a doctorate in law at the same university in 1972.

After five years spent in a private legal practice, Mme Patenaude joined the University of Montreal Public Law Research Centre, from its foundation in 1962 until 1973. She taught law on persons, family, marriage, covenants and gifts inter vivos at the same university.

AMBROSE H. PEDDLE
Parliamentary Commissioner
Province of Newfoundland

Ambrose Peddle was appointed to his post in June of 1975. Mr. Peddle brought a variety of business, political and

administrative experience to his position.

Mr. Peddle was born in Corner Brook, Newfoundland, in 1927 and was educated at St. Henry's School and St. Bernard's Academy in Corner Brook. In 1944 he entered public service working for both the provincial and the federal governments.

From 1952 to 1961, Mr. Peddle was an accountant, retailer and life insurance underwriter, and worked in the real estate business.

In the political sphere, Mr. Peddle was Mayor of the Town of Windsor, Newfoundland, from 1961 to 1966 and from 1962 to 1966 he was a member of the Newfoundland Legislature for the district of Grand Falls. Mr. Peddle stood for the House of Commons in 1968, in the riding of Grand Falls-White Bay-Labrador, was elected, and served as Member until 1972.

PROFESSOR DONALD C. ROWAT
Department of Political Science
Carleton University, Ottawa

Dr. Rowat is well-known for his studies on the Ombudsman concept. A native of Somerset, Manitoba, he was educated in Saskatchewan and Ontario, receiving a B.A. from the University of Toronto in 1943. Continuing his studies in New York, he completed his M.A. at Columbia in 1946 and his doctoral thesis at that University in 1950. In his early years Dr. Rowat taught in Texas, British Columbia and Nova Scotia. Named Assistant Professor of Political Science at Carleton College, Ottawa, in 1950, he was appointed full Professor in 1958 and between 1962 and 1965 was Chairman of the Department of Political Science at Carleton, by then a University.

Dr. Rowat first studied the Ombudsman plan in Scandanavia in 1961 and 1962, and in 1965 had published "The Ombudsman: Citizen's Defender", revised in 1968 to include recent worldwide developments. He has participated as a member of the Editorial Committee and as Group Chairman at the Thirty-Second American Assembly on the Ombudsman in 1967. In 1973, he had published "The Ombudsman Plan: Essays on the Worldwide Spread of an Idea", and in the same year edited and wrote the foreword to "The Finnish Parliamentary Ombudsman", by Michael Hiden.

CLAUDE RYAN
Publisher, Le Devoir
Montreal, Quebec

Claude Ryan was born in Montreal in January, 1925. Graduating from the College Ste-Croix in 1944, he attended the School of Social Services at the University of Montreal until 1946. In 1951-1952, Mr. Ryan studied the History of the Church at the Gregorian Pontifical University in Rome.

From 1945 - 1962, Claude Ryan served as National Secretary to the French-language section of the Canadian Catholic Action (l'Action Catholique Canadienne). Between 1951 - 1961, he was President of a Committee to study adult education organized by the Minister of Education in the Province of Quebec.

Mr. Ryan has been associated with Le Devoir since 1962, when he joined that newspaper as an editor. Since May, 1964, he has been Director-General of Le Devoir and of "Imprimerie Populaire Ltee." Between 1964 - 1971, Mr. Ryan was a member of the administrative council of the Canadian Press, and was named in 1968 to the Canadian News Hall of Fame. He was awarded a National Press Club prize in 1965 and a prize in 1971 from the Windsor Press Club for his contribution to Canadian journalism.

CAMERON SMITH
Assistant to the Editor
The Globe and Mail
Toronto, Ontario

Cameron Smith was born in Kirkland Lake and grew up in Sudbury. He graduated in Law from Dalhousie University in Halifax in 1960, and practised law with a firm in Toronto for three years.

In 1965 he left law to work as a reporter for The Globe. In 1969 he became an editorial writer, then Assistant to the Editor in 1972.

Mr. Smith won the National Newspaper Award for editorial writing in 1971 and again in 1976.

DR. HARRY D. SMITH
Ombudsman
Province of Nova Scotia

Born in Halifax, Nova Scotia, Harry Smith was appointed Nova Scotia's first Ombudsman in April, 1971. At that time, the 55 year old Dr. Smith was a professor of French at Nova Scotia's Teachers' College in Truro, having formerly been President and Vice-Chancellor at the University of King's College in Halifax for six years, Head of the Department of French at Royal Roads Military College for ten years, and a former Associate Professor of French at Dalhousie University, Halifax. Dr. Smith completed his undergraduate degree in French at Dalhousie in 1939, then attended the Sorbonne in Paris. When World War II and the occupation of France interrupted his studies in 1940, he returned to Canada, and Dalhousie, where he completed his Masters degree in 1941.

Harry Smith served as a wartime naval volunteer until 1945, and returning once again to his studies, completed his doctoral thesis at Laval University in 1947. Dr. Smith was a member of the first Bilingual District Advisory Board, a federal government appointment, and has served on similar commissions sponsored by the Government of Nova Scotia.

DR. STUART SMITH, M.P.P.
Leader of the Opposition
Province of Ontario

Dr. Stuart Smith was born in Montreal where he received his primary and secondary education. Entering McGill University, he studied medicine, and upon completion of his M.D. went on to do post-graduate studies in Montreal and London, England.

Moving to Hamilton, Ontario, Dr. Smith was appointed one of the first faculty members at the new McMaster University Medical School, and served as Director of In-Patient Psychiatric Services at St. Joseph's Hospital. Dr. Smith's work in politics has involved a period as Executive Assistant to the Honourable Alan MacNaughton, then Speaker of the House of Commons.

Dr. Smith was first elected to the Ontario Legislature as member for Hamilton-West in October, 1975. He was chosen leader of the provincial Liberal Party in January of 1976, then re-elected in his Hamilton seat in the election of June, 1977.

BORDEN SPEARS
Senior Editor and Editorial Ombudsman
The Toronto Star

Borden Spears is a classics graduate from the University of Western Ontario.

In 1938, he first joined the Toronto Star as a political and foreign correspondent, and was later city editor and managing editor.

During World War II, Mr. Spears was a member of the RCAF, serving as a radar technician, and later as public relations officer in Britain, Italy and Southeast Asia.

With MacLean-Hunter Ltd., which he joined in 1960, Mr. Spears worked as an editorial consultant, later executive editor of the Financial Post, and editor of MacLean's Magazine from 1964-1969.

Rejoining the Toronto Star as director of editorial planning and research, Borden Spears was subsequently named managing editor and, finally, senior editor, which post he holds to this date.

In addition to his editorial duties, Mr. Spears is the writer of a Saturday Column on Responsibility and the Press.

GLENN ROSS THOMPSON
Deputy Minister
Ministry of Correctional Services
Province of Ontario

Glenn Thompson was appointed Deputy Minister of Correctional Services for Ontario, effective February 1, 1975. Born in Campbellford, Ontario, Mr. Thompson completed his undergraduate and graduate studies at the University of Toronto. His field work towards a Master of Social Work degree included the area of Public Welfare as well as experience in the Forensic Clinic at the Toronto Psychiatric Hospital.

He joined the Ministry in 1960 as a social worker at Millbrook Correctional Centre. In 1963, he went to Britain and worked as a psychiatric social worker in the Henderson Hospital, Therapeutic Community Program. Returning to Canada in 1964, he rejoined the Ministry as supervising social worker for the eastern part of the Province. In 1965, Mr. Thompson was appointed Superintendent of the Andrew Mercer Reformatory for Women in Toronto and in 1969, moved to the newly opened Vanier Centre for Women in Brampton as Superintendent. He

was appointed Administrator of Adult Female Institutions in 1969, and acted as Coordinator of the newly instituted Temporary Absence Program in 1969-70. During 1971 and 1972 he was involved in a consultation committee study of correctional services for women in the Maritime provinces.

THE HONOURABLE JOHN N. TURNER, P.C., Q.C.
Toronto, Ontario

The Honourable John N. Turner was born in 1929 in Richmond, Surrey, England. He completed his early education in Ottawa, and graduated from the University of British Columbia in 1949. He attended Oxford University as a Rhodes Scholar, and graduated a Bachelor of Arts in jurisprudence in 1951, a Bachelor of Civil Law in 1952, and a Master of Arts in 1957.

First called to the English Bar, Gray's Inn, London in 1953, Mr. Turner has subsequently been called to the Bar in Quebec (1954), Ontario (1968) and to the Bars of Barbados, the Yukon and North West Territories, Trinidad and British Columbia (all in 1969). In 1969 he was named Queen's Counsel in Quebec and Ontario.

Mr. Turner first stood as a Liberal candidate for the House of Commons in the riding of St. Lawrence-St. George in the general election of 1962. Elected at that time, he was re-elected in 1963 and 1965. From June, 1968, after the disappearance of the riding of St. Lawrence-St. George from the electoral map he sat until his retirement in 1976 as Member for Ottawa-Carleton. In April, 1963, Mr. Turner was named Parliamentary Secretary to the Minister of Northern Affairs and Natural Resources, and in December, 1965 was appointed Minister without Portfolio by Prime Minister Lester Pearson. In April, 1967, Mr. Turner was named to his first portfolio, Consumer and Corporate Affairs, and became Solicitor General the following year.

In the administration of Prime Minister Pierre Trudeau, following the election of 1968, John Turner was made Minister of Justice and Attorney-General, then became Minister of Finance in January of 1972.

In September of 1975, Mr. Turner resigned from the Finance portfolio and upon resigning from the House of Commons in February, 1976, joined the Toronto law firm of McMillan, Binch as a partner.

NORMAN WEBSTER
Legislative Journalist
The Globe and Mail, Toronto

Mr. Webster is a native of Summerside, Prince Edward Island. Now 36, he was raised in Sherbrooke, Quebec, where he attended Bishop's University to read Economics as an undergraduate, then St. John's College, Oxford, England, where he completed a Master's degree.

Returning to Canada, Norman Webster worked for the Sherbrooke Daily Record and the Winnipeg Free Press before joining Canada's national newspaper, The Globe and Mail, in Toronto.

He has worked in The Globe's Quebec and Ottawa bureaus, has edited The Globe Magazine, served as assistant to the editor, and sat on the editorial board of the newspaper. In 1970-71 he was The Globe and Mail Peking correspondent, winning a National Newspaper award in 1971 for his reports from that country.

Since 1974, Norman Webster has covered the Ontario political scene as Globe and Mail Queen's Park columnist.

ALEX B. WEIR
Solicitor to the Ombudsman
Province of Alberta

Alex Weir is a native Nova Scotian now living in Edmonton. He holds degrees in Commerce, Arts and Law from St. Mary's University and Dalhousie University, Nova Scotia, respectively.

Called to the Alberta Bar in 1960, Alex Weir was attached to several different government departments including the Attorney General's office in that province. He served as Secretary to the Clement Committee, the Public Inquiry that numbered among its recommendations proposals for the institution of an Ombudsman for Alberta, and later jointed the firm headed by Mr. Clement.

Alex Weir joined the Office of the Alberta Ombudsman in May, 1968. As Solicitor for that office, he has been recognized for several representations made before the courts, one such representation, being before Chief Justice Milvain of the Supreme Court of Alberta in which a favourable judgement was handed down covering the question of the Ombudsman's jurisdiction.

Mr. Weir is Vice-Chairman of the Ombudsman Committee of the International Bar Association.

THE CANADIAN CONFERENCE OF
LEGISLATIVE OMBUDSMEN - 1977

OFFICIAL ATTENDANCE

PROVINCIAL LEGISLATIVE OMBUDSMEN OF CANADA

Bérubé, J.E. Mrs. J.E. Bérubé	Luncheon Speaker	New Brunswick
Ivany, Dr. R.E. Mrs. R.E. Ivany	Luncheon Speaker	Alberta
Maloney, A. Q.C. Mrs. A. Maloney	Host	Ontario
Maltby, G.W. Mrs. G.W. Maltby	Luncheon Chairman	Manitoba
Patenaude, L. Q.C.	Panelist	Quebec
Peddle, A.M. Mrs. A.M. Peddle	Luncheon Chairman	Newfoundland
Smith, Dr. H.D. Mrs. H.D. Smith	Panelist	Nova Scotia

PROVINCIAL LEGISLATIVE OMBUDSMEN STAFF

Barker, W.K. Mrs. W.K. Barker	Session Chairman	Saskatchewan
Directors and Staff of the Ombudsman	Session Chairmen/ Panelists	Ontario
Ducharme, J-M.	Panelist	Quebec
Earle, G.S. Mrs. G.S. Earle	Panelist	Nova Scotia
Ferris, C.	Panelist	New Brunswick
Fournier, G. Mme G. Fournier		Quebec
Groenland, T.		Alberta
Lévêque, R. Mme R. Lévêque		Quebec
Mayer, G.K.		Saskatchewan
Sheehan, Mrs. P.		Newfoundland
St.Pierre, Mrs. J.		New Brunswick
Toews, R. Mrs. R. Toews		Alberta
Webb, R.F.		Manitoba
Weir, A.B.	Panelist	Alberta
Wood, P.F.		Alberta

FEDERAL REPRESENTATIVES

Hansen, I. Q.C. The Correctional Investigator	Ottawa, Ontario
McNally, B.	Ottawa, Ontario
Tsai, G.	Ottawa, Ontario
Turnbull, D.C.	Ottawa, Ontario
Yalden, M. The Commissioner of Official Languages	Ottawa, Ontario

CONFERENCE PARTICIPANTS, GUESTS AND PANELISTS

Baldwin, G.W. Q.C., M.P. Mrs. G.W. Baldwin	Peace River Alberta
Boychuk, His Hon. Judge E.C. Q.C. Mrs. E.C. Boychuk	Regina Saskatchewan
Campbell, Mrs. M. M.P.P.	Province of Ontario
Clement, The Hon. Mr. Justice C.W. Mrs. C.W. Clement	Edmonton Alberta
Cocks, Sir B., K.C.B., O.B.E. Lady I. Cocks	London England
Cooper, R.	Toronto, Ontario
Davis, Premier Wm.G., Q.C., M.P.P.	Province of Ontario
Dixon, J.E.	Province of Alberta
Flahiff, His Eminence Cardinal G.B., C.S.B., D.D.	Winnipeg Manitoba
Frank, Dr. B. Mrs. B. Frank	Pennsylvania U.S.A.
Godfrey, Chairman P.V.	Municipality of Metropolitan Toronto
Herridge, A.J.	Government of Ontario
LaMarsh, The Hon. J., P.C., Q.C.	Toronto, Ontario
Lévesque, G.D., M.N.A.	Province of Quebec
Lewis, R. Q.C.	Government of Ontario
Lewis, S.H. M.P.P.	Province of Ontario
MacDonald, D.C. M.P.P.	Province of Ontario
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